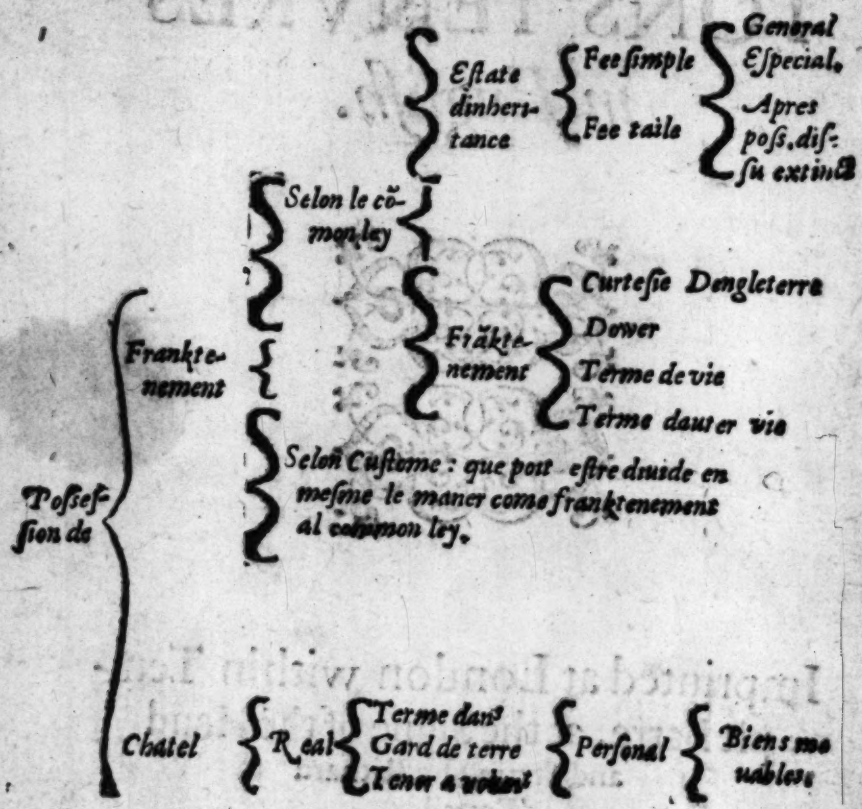
LITTLE-
TONS TENVRES
in English.

Imprinted at London within Temple Barre, at the Signe of the Hand and Starre, by Richard Tottell.

1592.

Cum Priuilegio.

¶ A figure of the diuision of possessions.



Rec. June 20, 1904

TEnant in fee ſimple is he which hath lands or tenemẽts to hold to him, & to his heires for euer. And it is called in Latin Feodum ſimplex: for feodum is called inheritance, and ſimplex is as much to ſay, as lawful or pure, and ſo Feodum ſimplex is as much to ſay, as lawful or pure inheritance: For if a man wil purchaſe lands or tenements in fee ſimple, it behoueth him to haue theſe wordes in his purchaſe, to haue and to hold vnto him and to his heires: for theſe wordes (his heires) make the eſtate of inheritance. Anno 10. H.6. fo. 38. For if any man purchaſe land by theſe wordes: To haue and to hold to him for euer, or by ſuch wordes: To haue and to hold to him and to his aſſignes for euer. In theſe two caſes he hath none eſtate but for terme of life, for that that hee lacketh theſe wordes (his heires) which words only make the eſtate of inheritance in all feffements and graunts.

¶ And if a man purchaſe landes in fee ſimple, & die without iſſue, euery one that is his next coſin collaterall, of the whole bloud, how farre ſoeuer that he be from him of degree, may inherite & haue the ſame land as heir vnto him. But if ther be father & ſonn, & the father hath a brother which is vncle vnto the ſonne, & the ſonne purchaſeth land in fee ſimple, & dyeth without iſſu liuing the father, the vncle ſhal haue the lãd, as

heire vnto the sonne, & not the father (yet the father is more nygh of bloud vnto the sonne) for that that there is a ground in the law, that inheritance may lineally discend, but not lineally ascend: yet if the sonne in such case die without issue & his vncle entreth into ꝑ lād as heire vnto the sonne (so as he ought by the law) and after if the vncle decease without issue lyuing the father, thē shal the father haue the land as heire vnto ꝑ vncle, & not as heir vnto the sōne, for that that he commeth vnto the lād by collateral discent, & not by lineal ascention.

And in such case where the sonne purchaseth land in fee simple, and dieth without issue, they of his bloud on the fathers side shall inherite as heire vnto him, before any of the bloud of the mothers side. But if he haue no heire on the fathers side, then shal the land discend vnto his heire on the mothers side. And this is the opinion of the Justices M. 12. E. 4. fo. 34. But there it was holden if any land discende vnto a man by the fathers side which dyeth without issue, that his next heire on the fathers side shal inherite vnto him, that is to say, the next of bloud of the father of the graund fathers side. And for default of such an heire, they that be of the fathers bloud of the part of the mother of the father (that is to say,) the graundmother ought to inherite. And if there be no such heire on the fathers side, then the Lord shal haue the lande by Escheate. And so it is if a man take a wife inherite in fee simple,

which

which hath issue a sonne & dieth, & ꝑ sonne entreth into the tenements as sonne & heire vnto his mother, and after dyeth without issue, the heires on the mothers side ought to enherite the tenements, and not the heires on the fathers side.

And if there bee no heires on the mothers side, then the Lord of whō ꝑ same land is holden, shal haue the same land by eschete. In the same maner it is if lāds discende vnto ꝑ sonne on ꝑ fathers side, which entreth, & after dyeth wout issue, the land shal discend vnto ꝑ heires on ꝑ fathers side, & not vnto the heires on the mothers side. And if there be none heires on the fathers side, then the lord of whom ꝑ land is holden, shall haue the same land by eschete. And so ye may see the diuersitie, where ꝑ sōne purchaseth lands in fee simple, & where he cōmeth vnto those lands or tenements by discēt on the fathers side or on the mothers side.

Also if there be three brethren, & the middle brother purchaseth land in fee simple & dyeth without issue, the elder brother shall haue the land by discent & not the yonger. Also if there be three brethren, & ꝑ yongest brother purchaseth land in fee simple & dieth without issue: ꝑ elder brother shal haue the land by discent, and not the middle brother, for that ꝑ the elder brother is more worthy of bloud.

¶ And it is to bee vnderstood that no man shal haue land in fee simple by discent as heire vnto any man, vnlesse hee bee his heire of the whole bloud. For if a man haue issue two

sonnes by ij. venters, and the elder purchaseth lande in fee simple and dyeth without issue, the yonger brother shall not haue the land but the vncle of the elder brother or some other his nigh cosin shall haue it, for that that the yōger is but of the halfe bloude to the elder brother, And if a man haue a sonne and a daughter by one ventre, and a sonne by an other ventre, and the sonne by the first venter purchaseth lande in fee simple and dyeth without issue, the sister shal haue the land by discent as heire vnto her brother and not the yonger brother, for that ỹ the sister is of ỹ whol blod to her elder brother.

¶ And also where a man is seysed of lande in fee simple, and he hath issue a sonne & a daughter by one venter and a sonne by another venter and dyeth, and the elder sonne entreth, and dieth without issue, the daughter shal haue the lande and not the yonger sonne, and yet is the yōger sōne heire vnto his father but not vnto his brother. But if ỹ elder sōne enter not into the lande after the death of his father, but dyeth before entre be made by him, then the yonger brother may enter and haue the lande as heire vnto his father. But where the elder sonne in the case aforesayde, entreth after the death of his father and thereof haue possession, then the sister shal haue the land. Quia possessio fratris de feodo simplici, facit sororem esse hered'. For the possession to be brother in fee simple maketh the sister of the heire.

¶ But if there bee two brethren by diuers venters

benters, and the elder is seised in fee simple & dyeth without issue, and his vncle entreth as heire vnto him, which also dyeth without issue, then the yonger brother may haue the land as heire vnto his vncle, because he is of the whole bloud to him though he be but of halfe bloud vnto his elder brother.

¶ And it is to be vnderstood that this worde (Inheritance) is not only vnderstood where a man hath landes or tenementes by discent of heritage, But also euery fee simple or fee taile that a man hath by his purchase, may bee sayd inheritance, for that, that his heires may inherite him. For in a writ of right that a man bringeth of lande, that was of his owne purchase, the writ shall say: Quam clamat esse ius & hereditatem suam. That is to saye, which hee claymeth to bee his right and his inherytaunce. And so it shalbe sayd in dyuers other writtes which a man or a woman bringeth of their owne purchase, as it appeareth by the Register.

¶ And of such thinges as a man may haue a manuel occupation, possession, or receyte, as of landes, tenementes, rentes, and such other, a man shall say in his pleading, and waye of barre, that one suhy was seised in his demesne as of fee. But of such thinges as lye not in manuel occupation &c. as of aduowson of a Church, and such manner thinge: there he shal saye, that hee was seysed as of fee, and not in his demesne as of fee. And in latine it is in

the same case saide. Quod talis fuit seisitus in dominico suo vt de feodo, that is to say, that such one was seised in his demesne as of fee, and in the other, Quod talis fuit seisitus vt de feodo, that is to saye, that one such was seysed as of fee.

And note well that a man may not haue a more large ne greater estate of inheritãce, then fee simple.

Also, purchase is called the possession of lãds or tenementes that a man hath by his deeds or by his agreement, vnto which possession he commeth, not by discent of any of his auncestors, or of his cosins, but by his owen deede.

¶ Fee taile.

TEnant in fee taile is by force of a statute of Westminster the secõd, capitulo primo. For at the common law before the sayd statute, all inheritances were fee simple. For all the gifts which bin specified within the saide statute, were fee simple conditionally, as it appeareth by the rehersal of the statute. And now by the same statute tenant in the taile is said in two manners, that is to say, tenant in taile general, and tenant in taile special.

Tenant in taile generall, is where landes or tenementes bee geuen to a man and to his heires of his body begotten. In this case it is said generall taile, for that that whatsoeuer woman that the tenant taketh to wife, if hee haue many wiues, and by eche of them hath

issue

issue, yet eche one of these issues by possibilitie may enherite the tenementes by force of the sayd gift, because that euery such issue is of his body engendred.

In the same maner it is, where landes & tenementes bee geeuen to a woman and to the heires comming out of her bodie, howbeit that shee haue manie husbandes, yet the issue that shee may haue by eche husbande, may inherite as issue in the taile, by force of such gifts. And therefore suche giftes beene called generall taile.

Tenant in tayle speciall, is where landes and tenementes bee geeuen vnto a man and his wife and the heires of their two bodyes begotten. In such case none may inherite by force of such gifte, but those that bee engendred betweene them two, and it is called especial taile, for that if the wyfe dye, and he taketh an other wife and hath issue, the issue of the seconde wife shall neuer inherite by force of such gifte. Nor also the issue of the seconde husbande if the first husbande dye.

In the same maner it is, where landes and tenementes bee geeuen by a man vnto an other with a wyfe, which is the daughter or cosin to the geeuer, in franke mariage, which gifte hath inheritance by these wordes (franke mariage) vnto it annexed, howbeit that they bee not expressely said or rehearsed in the gift that is to say, that these donees shall haue these landes or tenementes to them & to their

heires

heires betweene them two engendred, & this is
said especial taile, for that the issue of the secõd
wife may not inherite.

¶ And note well, that this worde Talliare, is
to say to set vnto some certeintie, or els limitt
vnto some certeine inheritance. And for
that that it is limitted & set in certaine, what issue
shall inherite by force of such giftes, and howe
long that the inheritance shal endure. There-
fore it is called in latin Feodum talliatum. i. here-
ditas in quadam certitudine limitata. For if tenant
in general taile dye without issue, the donor
or his heires shall inherite as in their reuer-
sion: in the same wise is it of the tenant in the
taile speciall &c. For in euery gift of the taile
without more saying, the reuersion of fee sim-
ple is in the donour.

¶ And the donees and their heires shall doe
to the donor and to his heires, such seruices as
the donour doth vnto his Lorde next aboue.
Except the donees in franke mariage, which
shall holde quietly from euery manner seruice,
(vnlesse it be for fealtie) vntill the fourth de-
gree be past. And after that the fourth degree
is past, the issue in the fift degree, and so forth
the other issues after him, shal hold of the do-
nour and of his heires as they hold ouer, as is
afore said.

¶ And the degrees in franke mariage shall bee
accompted in such maner, that is to say, from
the donour to the donees in frank mariage the
first degree, for that that the wife that is one

of

of the donees ought to bee daughter, ſiſter, or other coſin to the donour. And from the donees vnto their iſſue ſhall be accompted the ſecond degree. And from their iſſue vnto their iſſue, the third degree & ſo forth &c.

¶ And the cauſe is, for that after euery ſuch gifte, the iſſues that come of the donour, and the iſſues that come of the donees after the foweerth degree paſt of both parties in ſuch fourme to be accompted, may betwixt them by the law of holy Church intermarie. And that the donee in frank mariage ſhalbe the firſt degree of the fower degrees, a man may ſee in a plee vpon a writ of right of Ward, Anno 31. Edwardi 3. where the plaintife pleadeth that his ayel or graundfather was ſeyſed of certain lands &c. And ỳ he held of an other by knights ſeruice &c. which gaue the land vnto one Raul Holland with his ſiſter in franke mariage &c. And alſo theſe tailes before ſaide, be ſpecyfied in the ſaid ſtatute of Weſtminſter the ſecond.

¶ And there bee dyuers other eſtates in the taile, howebeit that they bee not ſpecified by expreſſe wordes in the ſaid eſtatute, but they bee taken by the equitie of the Statute, As if landes be geuen vnto a man and to his heires males of his bodie engendred. In ſuch caſe his heire male ſhall inherite, and the iſſue female ſhall neuer inherite, yet in theſe other tailes aforeſaide it is otherwiſe. In the ſame maner it is if landes bee geuen to a man and

to

to his heires females of his body engendred. In this case his issue females shall enherite by force and fourme of the said gyfte, and not the issue male, for that in such cases where the gifte is who ought to enherite and who not, the will of the donour shall be obserued. And in case where landes bee gæuen vnto a man and to his heires males issuing of his bodie and hee hath issue two sonnes and deceaseth, the elder sonne entreth as heire male, and hath issue a daughter & deceaseth, his brother shall haue the lande and not the daughter, for that the brother is heire male. But it shalbe otherwise in these other tailes aforesaid, which bin specified in the said statute, the daughter shall enherite before the brother.

And if landes be gæuen vnto a man, and to his heires males of his bodye engendred and hee hath issue a daughter, which hath issue a sonne and deceaseth, and after that the donour deceaseth: in this case the sonne of the daughter shal not inherite by force of the taile, for that whosoeuer shall inheryte by force of a gifte in the tayle made vnto his heires males, behoueth to conuey his discent alwaye to the males M. decimo octauo Edwardi tertij folio 45. But in such case the donour shall enter for that the donee is dead without issue male in the lawe. In so much that the issue of the daughter may not conuey to him the discente by heire male. And in the same manner it is where landes bee gæuen to a man and to his wyfe and to his heires

males

males of their two bodies ingendzed.

Also if tenementes bee giuen to a man and his wife, and to the heires of the bodie of the man ingendzed, in this case the husbande hath estate in the generall taile, and the wife but estate for terme of life.

Also if landes bee giuen to the husband and to the wife, and to the heires of the husband which he ingendzeth of the bodie of the wyfe. In this case the husbande hath estate in the speciall taile, and the wyfe but for terme of life.

And if the gift be made to the husband and to the wife, and to the heires of the wife of her bodie by the husbande ingendzed: then the wife hath estate in the special taile, and the husband but for terme of life. But if landes be giuen to the husband and the wife, and to the heires that the husband ingendzed on the bodie of the wyfe: In this case both haue estate in the tayle, for that this word (heires) is lymitted no more to the one, then to the other.

Also if landes bee gyuen to a man and to his heires that hee ingendzeth on the bodie of his wife: In this case the husbande hath estate in the tayle speciall, and the wife nothing.

Also if a man haue issue a sonne, and deceaseth, and the land is giuen to the sonne, and to the heires of the bodie of his father ingendzed, this is a good taile, and yet the father was dead at the time of the gift.

Also

¶ Also there be many other estates in the taile by the equitie of the said estatute, that be not specified here. But if a man giue landes or tenements to another, to haue and to hold to him and to his heires males, or to his heires females, hee to whom such gift is made hath fee simple, for that it is not limitted by the gyft of what bodie the issue male or female shal be, and so it may not in any thing bee taken by the equitie of the said estatute, and therefore he hath fee simple.

¶ Tenant in taile after possibilitie of issue extinct.

TEnant in the taile after possibilitie of the issue extinct, is where as lands or tenements be giuen vnto a man and to his wife in special taile, if one of them decease without issue, hee that suruiueth is tenant in the taile after possibilitie of issue extinct. And if they haue issue during the life of the issue, hee that suruiueth shall not be said tenant in the taile after possibilitie of issue extinct: Yet if the issue decease without issue, so that there be none alyue that may inherite by force of the taile, then hee that suruiueth of the donees is tenant in the taile after possibilitie of issue extinct.

¶ Also if landes bee gyuen to a man and to his heires that bee ingendred on the bodie of his wife: In this case the wife hath nought in the tenementes, and the husband is seysed as

as donee in speciall taile. And in this case if the wife decease without issue of her bodie ingendred by her husband, then the husband is tenant in the taile after possibilitie of issue extinct.

¶ And note well, that none may bee tenant in the taile after possibilitie of issue extinct, but one of the doneés, or the donee in special taile, for the donee in general taile may neuer be said tenant in the taile after possibilitie of issue extinct, for that alway during his life, hee may by possibilitie haue issue that may inherite by force of the same taile. And so in the same maner the issue that is heire vnto the doneés in a special taile, may not be said tenant in taile after possibilitie &c. causa qua supra.

¶ And tenant in taile after possibilitie of issue extinct shall neuer be punished of wast, for the inheritance that once was in him. Anno 10.H. 6.fol.1. But he in the reuersion may enter if he doth alien in fee. Anno 45.E.3.fol.22.

¶ Tenant by the Curtesie of Englande.

TEnaunt by the Curtesie of Englande, is where a man taketh a wife seised in fee simple, or in fee taile generall, or as heire in the taile speciall, and hath issue by the same wife male or female. The issue after beeing dead or alyue, if the wife decease, the husbande shal holde the same during his lyfe by the Law

of

of England, and this is called tenant by the Curteſie, for that it is not vſed in any other Realme but onely in England. And ſome ſay that it ſhal not be ſaid tenant by the Curteſie, but if the childe that he hath by his wife bee heard crie, for by the crie is the proofe that the childe that he had by his wife, was borne.

¶ Tenant in Dower.

TEnant in Dower, is where a man is ſeiſed of certaine lands or tenements in fee ſimple or in general taile, or as heire in the taile ſpeciall, and taketh a wife and deceaſeth, the wife after the deceaſe of her huſbād ſhalbe endowed of the third part of ſuch landes or tenements that were her huſbandes any time during the couerture, to haue and to holde to the ſame wife in ſeueraltie, by meetes and boundes for terme of her life, whether ſhee haue by her huſband iſſue or none, and of what age that the wife bee, ſo that ſhee paſſe the age of nine yeres at the time of her huſbands death, or els ſhe ſhal not be endowed.

And note wel, that by the common Law the wife ſhal not haue for her dower but the third part of the tenements, which were her huſbands during the eſpouſels. By cuſtome of ſome Countrey ſhee ſhal haue the halfe, and by cuſtome of ſome Towne, or Borough, ſhee ſhall haue the whole: And in al theſe caſes ſhee ſhall be ſaid tenant in Dower.

All

¶ Also there is two other maner of dowers, that is to say, dower called dowement at the church dore, and dower called dowement by the fathers assent. Dowment at the Church dore, is where a man of ful age is seised in fee simple which shalbe wedded vnto a wyfe, when hee commeth to the church dore, and there after affiance, and trueth pleyght made betweene them, endoweth his wyfe of his whole land, or of the halfe, or lesse parcel, and there openly declareth the quãtity, & the certainty of his lande that shee shall haue for her dower. In this case the wyfe after the death of her husband shal enter into the sayd quantitie of lande, of which her husband endowed her without the assignement of any manne. Dowement by the fathers assent is, where the father is seysed of tenements in fee, and his sonne and heire apparaunt (when hee is wedded) endoweth his wife at the Churche dore of parcel of the landes or tenements of his fathers, by thassent of his father, and assigneth the quantitie of the parcels: In this case after the death of the sonne, the wife shal enter into the same parcel without ỹ assignemẽt of any other. Yet it hath ben said in this case that it behoueth the wife to haue a deede of the father, prouing his assent and consent of such endowment. And if after the death of her husbande shee enter and agree to any such dower of the sayd two dowers at the church dooze, then shee is concluded to claime

any other Dower by the common law of any landes or tenementes, which were of the saide husband. But if shee will, shee may refuse such dower at the Church doore, and then shee may bee endowed after the course of the common lawe. And note well, that no wife shalbe endowed of the fathers assent in the fourme aforesaide, saue where the husband is sonne and heire apparaunt to his father.

¶ Inquire of these two cases of Endowement at the Church doore &c. if ỹ wife at the time of the death of her husband passe not the age of nine yeres, if she shall haue such dower or no.

¶ And note well, that in all cases where the certaintie appeareth what landes or tenementes the wife shall haue for her dower, the wyfe may enter after the death of her husbande without assignement of any other. But where the certeintie appeareth not, as to bee endowed of the thirde parte, to haue in seuerall, or to bee endowed of the halfe after the custome, to holde in seueraltie: In such cases it behoueth that her Dower bee vnto her assigned after the death of her husband because it is not limitted before the assignement what partes of landes or tenementes shee shall haue for her dower. But if there be two Iointenaunts of certaine landes in fee, and the one alieneth that that to him pertaineth and belongeth, to an other in fee, which taketh

taketh a wife, and after dieth: In this case the wife for her dower shall haue the thirde part of the halfe that her husband purchased, to holde in common, and occupie in common as her part amounteth, with the heire of her husbande, and with the other Iointenaunt which alienedd not, for that in such case her dower may bee assigned by metes and boundes.

¶ And it is to be vnderstood, that ỹ wife shall not be endowed of landes or tenementes that her husband iointly held with an other at the time of his death. But where hee holdeth in common otherwise it is, as in the case aforesayd. And it is to witte, that if the tenant in taile endowe his wife at the church dore as it is aforesaid, ỹ shal serue for little or naught to the wife, for that that after ỹ death of her husband the issue in the taile may enter vpon the possession of the wife, and so may he in the reuersiō if there be no issue in the taile aliue.

¶ Also if a man seised in fee simple being vnder age, endowe his wife at the church dore and dieth, and ỹ wife entreth. In this case ỹ heire of her husband may put her out. But otherwise it is as it seemeth where the father is seised in fee, & the sonne within age endow his wife, of his fathers assent, the father then being of ful age.

¶ And there is an other Dower which is called Dowemement de la pluis beale. And that is in suche case that a man is seised

of xl. acres of lande, and he holdeth xx. of the ſaid xl. acres of one man by knightes ſeruice, and the other xx. acres of an other in ſocage, & taketh a wife, & hath iſſue a ſonne, and dyeth, his ſonne being within the age of 14. yeares, and the lord of whom the lande is holden by knightes ſeruice entreth into the xx. acres of lande holden of him, and them hath and occupieth as warden in chiualrie during the childes nonage, and the childes mother entreth in the remnant, and it occupieth as garden or warden in Socage. If in this caſe the wyfe bringe a writte of Dower agaynſt the warden in chiualrye, to bee endowed of the tenements holden by knights ſeruice in the kings Court, or in any other court, the gardeine in chiualrye may pleade in ſuch caſe al the matter, and ſhew how the wife is warden in ſocage as is aforeſayde, and praye that it may bee adiudged by the court, that ỳ wife endow her ſelfe of ỳ moſt faire, called Pluis beale, of the tenemẽts that ſhe hath as warden in ſocage, after the value of the third part that ſhe claymeth to haue of the tenementes in chyualrie by her writte of dower, and if the wife may not gaine ſay it, then the iudgement ſhall be made, that the wardẽ in chiualry ſhal hold the landes holden of him duringe the nonage of the childe quite from the woman &c. And that the woman may endowe her ſelfe of the moſt faire part of the landes that ſhee hath as warden in Socage to the value of the thirde

part

part that the warden in chiualry hath &c.
And after ſuche iudgement gyuen, the wyfe may take her neighbours, and in their preſẽce endow her ſelfe by mẽtes and bounds of the faireſt part of the tenementes that ſhe hath, as warden in ſocage, to the value of the third part of the landes that the warden in chiualry hath, and that to haue and holde for terme of her life. And ſuch dower is called dower of the faireſt part, or de pluis beale.

¶ With this agreeth .45. Ed.3.f.4. But there it was ſayd, that after the time that the heire come to his full age, the wyfe ſhal haue a new accciõ of dower againſt the heire, to be endowed of the third part of all that the man died ſeiſed. And note wel that ſuch dowment may not be, but where the iudgement is geuẽ in ỹ kings court, or in ſome other court. And the wife may do this for ſaluatiõ of the eſtate of the warden in chiualry during the nonage of the child. And ſo ye may ſee fiue manner of dowers, that is to ſay, dower by the common lawe, dower by cuſtome, dower at the church dore, dower of the fathers aſſent, and dower of the moſt faire. And remẽber that in euery caſe where a man taketh a wife ſeiſed of ſuch eſtate of tenementes &c. ſo that the iſſue that he hath by his wife may by poſſibilitye inherite the ſame tenementes of ſuche eſtate that the wyfe hath, as heire to the wife: In ſuch caſe after the wyfe is dead, hee ſhall haue the ſame tenementes by the curteſie of Eng-

land and otherwise not.

¶ And also in euery case where the wife taketh an husband seised of such estate of tenements &c. so that by possibilitie it may happe the wife to haue some issue by her husband, & that the same issue may by possibility inherite the same tenemẽts of such estate that the husband had as heire to his father: of such tenementes shee shall haue her dower, and otherwise not. For if the tenements be geuen vnto a mã & to his heires that he getteth on his wiues body, in such case ỹ wife hath nought in the tenements, and the husband hath estate but as donee in special taile. Yet if ỹ husband die without issue, the same wife shalbe ẽdowed of the same tenements, for that the issue ỹ she by possibilitie might haue had by the same husband, may inherite the same tenementes. But if ỹ wife decease, liuing ỹ husbãd, which after taketh an other wife, ỹ second wife shal not be endowed in this case. Caula qua supra.

¶ A man was seised of certaine landes, and tooke wife, and after aliened the same landes with warrantie, and after the feoffour and feoffee died, and the wife of the feoffour bringeth an accion of dower against the issue of the feoffee, and hee vouched the heire of the feoffour, and during the voucher and not termined, the wife of the feoffee bringeth an accion of dower against the heire of the feoffee, and demaundeth the thirde parte of all that her husbande was seised, and woulde not demaunde

maunde the thirde part of those two partes ꝑ her husbād was seised, it was adiudged that shee should haue no iudgement vntill the time that the other plee were determined.

And also note that Vauisour sayth, that if a man be seised of landes, and committeth felonie, and alieneth, and after is attainted, the wife shall haue good accion of dower against the feoffee. But if it be escheated vnto ꝑ king, or vnto the lorde, shee shall haue no writte of dower. And so see the diuersitie, and enquire the cause.

¶ Tenant for terme of life.

TEnaunt for terme of life is, where a man letteth lands or tenements to an other for terme of life of the lessee, or for terme of life of an other man. In such case the lessee is tenaunt for terme of life. But by common language, he that holdeth for terme of his owne life, is called tenaunt for terme of life, and he that holdeth for terme of an other mans life, is called tenaunt for terme of an other mans life. And it is to be vnderstoode, that there is feoffour and feoffee, donour, and donee, lessour & lessee. The feoffour is properly where a mā enfeoffeth an other in anye landes or tenements in fee simple, he that maketh the feoffemēt is caled feoffour, and he vnto whom ꝑ feoffement is made, is called feoffee. And the donour is properly where a manne geeueth certaine landes or tenementes to an other in

the taile, he that maketh the gift is called donour, and he to whom the gift is made is called donee. And lessour is properly where a man letteth to an other certaine landes or tenementes for terme of life, for terme of yeres, or to hold at will, he that maketh the lease is called lessour, & he to whom the lease is made is called lessee, ond euery one that hath estate in lands or tenements for terme of his owne life, or for terme of an other mans life, is called tenant of freehold. And none of lesse estate may haue freehold, but they of greater estate may haue freeholde, for tenaunt in fee simple hath freehold, and tenant in the taile hath also freeholde.

¶ Tenant for terme of yeres.

TEnant for terme of yeres is, where a man letteth landes or tenements to an other for terme of certayne yeres after the number of yeres that is accorded betwene the lessour & the lessee, and when the lessee entreth by force of ỳ lease, then is he tenant for terme of yeres, and if the lessour in such case reserue to him a yerely rent vpon such lease, hee may chose for to distraine for the rent in the tenements letten, or els he may haue an accion of debte for the arrerages against the lessee. But in such case it behoueth that the lessour be seysed in the same tenemẽts at the time of his lease, for it is

it is a good plee for the lessee to say, that ỹ lessour had nothing in the tenementes at ỹ time of the lease, except the lease be made by deede indented, in which case then suche plee lieth not for the lessee to plede.

¶ And it is to be vnderstood, ỹ in a lease for terme of yeares by deede or without deede, it needeth no liuery of seisin to be made to ỹ lessee, but he may enter whensoeuer hee will by force of the same lease. But of feffemẽts made in the country, or giftes in the taile, or leases for terme of life, in such cases where freehold shall passe, if it be by deede or without deede, it behoueth to haue liuery of seisin &c. But if a man let lands or tenements by deede or without deede for terme of yeres, the remainder ouer to an other for terme of life or in the taile, or in fee, then in such case it behoueth that the lessor make liuery of seisin to ỹ lessee for terme of yeares, or els there shall nothing passe to them in the remaynder, though the lessee enter in the tenementes. And if the termour in such case enter before any such liuery of seisin made vnto him, then is the freehold and ỹ reuersion in the lessour. But if he make any liuery of seisin vnto the lessee, then is the freeholde with the fee to them in the remaynder after the forme of the graunt, and will of the lessour.

¶ And if a man will make a feoffement by deede or without deede of landes or tenements that he hath in many Townes in one shiere, if the liuerye of seysin be made in one parcel

parcell of the tenements in one towne in the name of all, it suffiseth for all the other lands or tenements comprehended in the same feoffement, in all other townes in the same shire. But if a man make a deede of feoffement of landes or tenementes in diuers shires, there it behoueth him to haue in euery shire a liuery of seisin. And in such case a man shal haue by the graunt of an other fee simple, fee tayle, or freehold, without liuery of seisin. And if .ij. men be, & eche of them is seised of a quantitie of land within one shire, & the one graunteth his land to the other in exchange for that lād that the other hath, and in the same manner the other graunteth his lande vnto the first grātor in exchange for the land that the first grantor hath. In this case eche may enter in the others lands so taken in exchange without any liuery of seisin. And such exchange made by wordes, of tenements wtin ẏ same shire without any wryting, is good enough. And if the lands or tenements be in diuers shires, that is to say, if that the one haue in one shire, and ẏ the other haue in an other shire, it behoueth to haue a deede indented made betweene thē of such exchange.

¶ And note, that in exchange it behoueth ẏ the estates that both parties haue in ẏ lands so exchaūged, be equal. For if the one willeth & graunteth that the other shal haue his land in the tayle for ẏ lād that he hath of ẏ graunt of the other in fee simple, though the other agree to that, yet this exchange is but void, for

that

that the estates be not euen

¶ In the same mānet it is where it is graū-ted and agreed betwene them, ꝯ the one shall haue in the one land fee tayle, & the other shal haue in the other land but terme of life. Or if one shal haue in the one lande fee tayle gene-ral, and the other in the other lande fee taile especial &c. So alway it behoueth that in ex-chang ꝯ estate of both parties bee euen, ꝯ is to say, if the one haue fee simple in ꝯ one lād, that the other shall haue such estate in the o-ther land, and if the one haue fee tayle in the one lande, then the other shall haue likewyse in the other lande Et sic de alijs statibus. But it is nothinge to charge of the euen value of the landes, for though that the lande of the one is so much more in value then the lande of the other, this is nothinge to purpose, so that the estates made by the exchaunge bee euen, and in exchaunge be two grauntes, for euery party graunteth his lande to the other in exchaunge, and in eche of their grauntes mencion shalbee made of the exchaunge.

¶ And if a man let land to an other for terme of yeres, though, the lessour die before ꝯ lessee enter into ꝯ tenements, yet may he enter in-to the tenements after the death of ꝯ lessour, for that, that the lessee by force of ꝯ lease hath right incontinent to haue the tenementes af-ter the fourme of the lease. But if a man make a deede of feofement vnto another, and a letter of attorney to a mā to deliuer to him

lessur

seisin by force of ꝯ same deede, yet if the liuere of seisin be not made in the life of hym that made ꝯ deede, it auayleth not, for that the other hath no maner of right to haue the tenementes after the purport of the deede before ꝯ liuery of seisin &c. And if no liuery be made then after ꝯ death of hym that made the deede ꝯ right of such tenemẽts is incõtinẽtly in his heire or in some other. Also if tenementes bee set to a man for terme of halfe a yeare, or for terme of a quarter of a yere &c. In such case if the lessee make wast, the lessour shall haue against him a writ of wast, and the writ shall say. Qui tenet ad terminum annorum. But hee shall haue a special declaratiõ vpon the troth of this matter, and the plee shall not abate the writ for that that he may haue no other writ vpon the matter. An. 7. H. 7. fo. 1.

¶ Tenant at will.

TEnant at will is, where landes or tenements be letẽ by a man vnto an other. To haue and to hold to him at the will of the lessour by force of which lease ꝯ lessee is in possession. In such case the lessee is called tenant at wil, for that he hath no certaine sure estate for the lessour may put him out at what time it pleaseth him, yet if the lessee sowe the land, and the lessour (after the sowinge and before that his graynes bee ripe) put him out, yet shall the lessee haue his graines, and shal haue free egresse and regresse to reape & to carry hys

his graines, for that he wist not at what time his lessour would enter vpō him. Otherwise it is if tenant for terme of yeres before ỹ end of his terme soweth the lande, and the terme ende before that his graines be ripe. In this case the lessor, or he in the reuersion shall haue the graines for that the fermour knewe well the certein of his terme, and when his terme should be ended.

¶ Also if an house be let to a man to holde at will, by force of which the lessee entreth into the house, within which house he bringeth his houshoide stuffe, and after the lessour putteth him out, yet shall hee haue free entre, egresse, and regresse in the same house by reasonable time to carrye his goods and houshold stuffe, And if a man be seised of a house in fee simple fee taile, or for terme of life, the which hath certeine goodes within the same house, and maketh his executors and deceaseth, whosoeuer after his death hath the house, yet shall his executors haue free entre, egresse, and regresse to carrye out of the house the goodes of their testators by a reasonable time.

¶ Also if a man make a deede of feoffement vnto an other of certeine land, and deliuereth to him the dede, but no liuery of seisin In this case he to whom the deede is made may enter into the lande, and holde and occupie it at the will of him that made the deede, for that, ỹ it is proued by the words of the deede, that it is his wil that the other shall haue the lād. But

he

he that made the deede, may put him out when he will.

¶ Also if an house be let to holde at will, the lessee is not holden to sustayne or repaire the house as tenant for terme of yeres is holden to do. But if the lessee at will make voluntarie wast, as in putting downe of houses, or in cutting or felling of trees: It is said that the lessour shall haue for that against him an action of trespas. As if I deliuer to a man my sheepe to doūg or marle his land, or mine oxē to ayre his land, and he slayeth the beastes, I may wel haue an actiō of trespas against him notwithstanding the deliuery.

¶ Also if the lessour vpon such lease at will reserue vnto him a yerely rent, hee may distreyne for the rent behinde, or haue for that an action of debt at his owne choice H. 6. R. 2. in a Repleuin.

¶ Tenant by copy of court roule.

TEnant by copy of court roule is, as if a mā bee seised of a māner within which manner there is a custome, and hath bene vsed in time out of minde, that certayne tenaunes within ỹ same maner haue vsed to haue lāds or tenements, to holde to them and to theyr heirs in fee simple, or in fee taile, or for terme of life &c. at the will of the lorde, after ỹ custome of the same manner, and such tenaunt may not alyen the lande by deede, for then the

the Lorde may enter as in a thing forfayt to him. But if he wil alyen his land to another, him behoueth after some custome to surrender the tenementes in some court &c. into the Lordes handes to the vse of him that shall haue the estate, in such fourme, or to such effecte. Ad hanc curiam venit A. de B. et sursum reddidit in eadem curia, vnum mesuagium &c. in manus domini ad vsum E. de A. & heredum suorum, vel heredum de corpore suo exeunt, vel pro termino vitę suę &c. Et super hoc venit prędictus E. de A. & cæpit de domino in eadem curia mesuagium prędictum &c. habendum & tenendū sibi & heredibus suis, vel sibi & heredibus de corpore suo exeuntibus, vel sibi ad terminū vitæ sue, ad voluntatem domini secundum consuetudinem manerij, facid' & reddend' ind' redditus. debit' seruitia, & consuetudines ind' prius debita, & de iure consueta, & dat domino de fine &c. Et fæcit domino fidelitatem &c. That is to say, A. of B. comming vnto this court, & surrēdreth in the same court a mese &c. into the handes of the Lorde, to the vse of E. of A. and his heires, or the heires issuinge of his bodye, or for terme of lyfe &c. And vpon that commeth the forsayd E. of A. and taketh of the lord in the same court, the forsayde mese &c. To haue & to hold to him & to his heires, or to him & to the heires issuinge of his body, or to him for terme of lyfe, at the Lords will after the custome of the manner to do & yelde there-

therefore rents, detts, seruices, and customes thereof before due and accustomed &c. and geueth the Lorde for a fine &c. and maketh vnto the Lorde his fealtie &c. And such tenants be called tenaunts by copye of Court roule, for that they haue none other euidence concerninge their tenementes but the copyes of the court roules, and such tenaunts shall not implede nor be impleded for their tenements by the kings writte, but if they will implede other for their tenemts, they shal haue a plait made in the court of the Lorde in such forme, or to such effect A de B. queritur vers' C. de D. de placito terre, videlicet, de vno messuagio quadraginta acris tre, quatuor acris parti &c cum pertinentijs. Et facit protestationem sequi querelam istam in natura breuis domini Regis assise mortis antecessoris ad cõmunem legẽ, vel breuis domini regis assise nouel disseysin ad communem legem.

That is to say A. of B. complayneth against, C. of D. of a plæ of lande, that is to saye of a mese, and forty acres of lãd, fower acres of medowe &c. with the appurtenaunces, & maketh protestation to sue his plaint in nature of the kinges writ of assise of the death of his antecessour, at the common law, or by writ of our soueraigne lord the king of assise of Nouel disseisin at the common lawe, or in nature of some other writ &c. pledges to prosecute F. G. &c. And though ẏ some such tenants haue inheritance after the custome of ẏ maner, yet

they

they haue none estate but at the Lords will, & after the course of the common lawe, for it is saide, if the Lorde put them out, they haue no other remedy but to sue vnto the lord by petition. For if they had any other remedy they should not be said tenaunts at the lords will after the custome of the manner, but ꝑ Lord will not breake the custome ꝑ is reasonable in such cases. But Brian chiefe Justice sayeth that his oppinion alwaies hath bene, and alwaies shall bee, if such a tenaunt by custome (paying his seruices) bee cast out by the lord, he shall haue an action of Trespas against him. H. 2. E. 4. And likewise was the oppinion of Danby chife Justice M. 7. E. 4 for he sayth that the tenaunt by the custome, is aswel inherit to haue the land after ꝑ custome, as well as hee that hath franketenement by the common law.

TEnaunts by the yarde be in suche nature as tenaunts by coppe of court roule. But the cause for which they be called tenants by the rodde, or yarde is, for that when they will surrender their tenements into ꝑ Lords hande to the vse of an other, they shall haue a lyttle yarde or rodde by the custome and vse, in their handes, which they shall deliuer vnto the Stewarde or Baylife, after the custome and vse of the manner. And he that shall haue the land, shall take the same lande in the court, & his taking shalbe entred in the rolle And the steward or the bayliffe, according to

the custome, shall deliuer vnto him that taketh the lande, the same yard or another yard in the name of seisin. And for this cause they be called tenauntes by they yarde. But they haue none other euidence but copie of the court roule.

¶ And also in diuers lordshippes and manours there is such a custome if such a tenãt that holdeth by the custome will alyen hys landes or tenementes, he may surrender his landes vnto the Bailife, or to the Reue, or to two sad men of ẏ same lordship, to the vse of him, that shal haue the land, to haue in fee simple, fee tayle, or for terme of life &c. and all that shal be presented at the next court. And then hee that shall haue the lande by copie of court roule, shal haue the same land after the entent of the surrender Also it is to weete, that in diuers lordships and diuers mãners, there be made diuers customes in such cases, as to take tenemẽts, & as to pleđ, and as touching other things and customes to be done, & all that that is not against reason, may wel be admitted and allowed. And such tenaunts that holde after the custome of a seigniory, or after ẏ custome of a mãner, though they haue estate of inheritance, after the custome of the lordship, or of ẏ mãner, yet because they haue not any freeholde by the course of ẏ Cõmon law, they be called tenauntes by base tenure.

¶ And diuers diuersities there be betwene a tenant at wil which is in by the lease of his

lessour

lessour by the course of the common law, and tenant after the custome of the māner in the fourme aforesaid. For tenant at wil after ỹ custome may haue estate of inheritance as it is aforesaid at ỹ Lords wil after the custome and vsage of the manner: But if a man haue lands or tenemēts which be not within such manner or lordship where such custome hath beene vsed in the fourme aforesayd, and will let such landes or tenementes to an other, to haue and to holde to him and to his heires at the will of his lessour, these wordes, to the heires of the lessee bee voyde, for this is the cause, if the lessee die and his heire enter, the lessour shall haue a good action of trespas against him, but not so against the heire of the tenant by the custome in any case &c. for that the custome of the manner in some case may helpe him to barre his Lorde in an action of trespas.

¶ Also tenaunt by the custome in some places ought to repaire and sustayne the houses and the other tenant at will ought not.

Also one by the custome shal do fealtie & the other not. And diuers other diuersities there be betweene them.

¶ Thus endeth the first booke.

HOmage is ỹ moſt honorabl' ſeruice and moſt humble ſeruice of reuerence ỹ a franktenant may do to his Lord For whē the tenaunt ſhal make homage to his Lord, he ſhall diſcend, and his head vncouered, & his Lord ſhal ſit, & the tenant ſhal kneele before him on both his knees & hold his hands ioyntly together betweene ỹ hands of his Lord, and ſhal ſay thus. I become your man from this day forward of life and limme, & of earthly worſhip, & vnto you ſhal be true & faithful, & beare you faith for ỹ tenements that I claime to hold of you, (ſauing the faith ỹ I owe vnto our ſoueraygne Lord the king.) And then the lorde ſo ſtringe ſhall kiſſe him.

¶ But if an Abbot, or Priour, or any other man of religion ſhall make homage vnto his Lorde, hee ſhall not ſay, I become your man, for that he hath profeſſed himſelfe only to be Gods man. But he ſhall ſay thus, I doe you homage, & vnto you ſhall be trew and faithfull, and beare you faith for the tenementes that I clayme to holde of you. Sauing the fayth that I owe vnto our ſoueraigne Lorde the Kinge.

¶ Alſo if a woman ſole ſhall make homage vnto her Lorde, ſhee ſhall not ſaye, I become your woman, for that is not conuenient for a woman to ſay that ſhee ſhall become a woman to any but onely to her huſband

band when she is wedded. But she shall say I make vnto you homage, and to you shalbe true and faithful, & shall beare you faith for ỹ tenementes that I holde of you, sauing the faith that I owe to our soueraigne Lorde the king.

But if a man haue seueral tenancies which he holdeth of seuerall Lordes that is to say, euery tenacy by homage. Then when he maketh homage vnto one of his Lordes, he shall say in the ende of his homage. Sauinge the fayth that I owe vnto the king and vnto my other Lordes.

¶ And note well that none make homage but such as haue estate in fee simple, or in fee tayle in his owne right, or in an other mans right. For it is a ground in the lawe, that he ỹ hath estate but for terme of life, shall make none homage, nor take none homage.

For if a woman haue landes or tenements in fee simple or in fee taile, which she holdeth of her Lorde by homage, and taketh an husband and hath issue, then the husbande in the life of the wife shal make homage, for that hee hath title to haue the lande by the curtesie, if he suruiue his wife. And also he holdeth in ỹ right of his wife But afore issue betweene them, the homag shalbee made in both theire names. But if ỹ wife decease before homage made by the husbande in the wyues life, and the husbande holdeth himselfe in as tenaunt by the curtesie, he shall make no homage vnto

his lord, for that he hath then none estate but for terme of life, More shalbee said of homage in the tenure of homage auncestrel.

¶ Fealtie.

FEaltie is as much to say as Fidelitas in latine, and when a franktenaunt shall make fealtie vnto the Lorde, he shall hold his right hand vpon a booke, and shall say thus. Heare you this my lord, that I vnto you shal be faithfull and true and beare you faith for ỹ lands or tenements that I claime to hold of you, and truely to you shall do the customes & seruices ỹ I ought to do vnto you at termes assigned, as God me helpe & al his saintes, & then he kissed the booke, But hee shall not kneele when he maketh his fealty nor shal make such hũble reuerence as is aforesaid in homage. And great diuersity there is had betweene making of fealtie, and of homage. For homage may not be made but to the lord himselfe. But the steward of the Lords court, or the balife may take fealty for the Lorde.

¶ Also tenant for terme of life shall make fealtie, & yet he shall make none homage, and diuers other diuersities there be betweene homage and fealty.

¶ Also a man may see a good note, Anno 15. E. 3. where and how a man and his wyfe made homage & fealtie in the common banke which is wrytten in such fourme. Note

that

that John Lewknor & Elizabeth his wife made homage vnto William Thorpe in this manner. The one & ỹ other held iountly their hands betwene the hands of Willia Thorpe & the husband said in this wise, we vnto you make homage, & beare you faith for ỹ landes that wee holde of A. your conusour which hath graunted you our seruices in B. & en C. & the other townes &c. against al men (sauing the faith that wee owe vnto our soueraigne Lord the king, and to his heires, and to our other lords) and the one and the other kissed him. And after they made fealtie, and the one and the other held their hands together vpō a booke, and the husbande sayde the wordes, and both kissed the booke, more shalbe saide of fealtie in the tenure of socage, & in the tenure of franke almoigne, and in the tenure of homage auncestrel.

¶ Escuage.

EScuage is called in latine Scutagium, that is to say seruice of shield. And such a tenāt that holdeth his lande by escuage, holdeth by knights seruice. And also it is cōmonly sayd that some hold by a fee of knightes seruice, & some by the halfe fee of knightes seruice &c. And it is said ỹ when ỹ king maketh a voyage roial into Scotlād for to subdu ỹ Scots hee that holdeth by a fee of knightes seruice, behoueth to be with the king by xl. daies well and couenably arrayed for the warre. And

likewise he that holdeth his land by the halfe of a fee by knightes seruice, ought to bee with the king by xx dayes, and he that holdeth his land by the fowerth part of a fee by knightes seruice, him behoueth to be with the kinge by x. dayes. And so after the quantitie, hee that hath more, to doe more, & he that hath lesse to do lesse. But it appeareth by the plees & arguments made in a good plee vpon a writ of Detinue of an obligatiõ brought by one Hẽry Gray Añ 7. E. 3. that it nedeth not to him that holdeth by escuage to goe himselfe, if hee will finde an able person for the warre conuenable arrayed for the warre, to goe wyth the kinge, and that seemeth good reason. For it may bee that hee that holdeth by suche seruice is sicke, in such wise that he may not goe nor ride.

And also an Abbot or any other man of religion, or a woman sole that holdeth by such seruice, ought not in such case to goe in proper persõ. And sir William Herle that time chief Justice of the common place, layd in the said plee, that Escuage shall not be graunted but where the king himselfe goeth in proper person. And so it abode in iudgement of the same plee if these xl. dayes shalbee accompted from the day of the muster of the kinges host made by the commons & by the kings commaundement Or els from the day that the king first entreth into Scotlande &c. therefore inquire of this matter.

¶ And after such voyage into Scotland

it

It is commonly sayde that by the authority of Parliament, the escuage shalbe set and put in certayne, that is to saye a certaine summe of money how much euery one that holdeth by a whole fee of knights seruice which was not in his owne proper person, nor none other for him which the king, shall pay vnto the Lord of whom hee holdeth his lande by escuage. As put case that it was ordayned by authority of parliament that euery one that holdeth by a whole fee by knightes seruyce which was not with the king, shall pay to his Lord xl. s. Then he that holdeth by the halfe of a fee by knightes seruice, shall paye vnto his Lorde but xx. s. and so who more more: and who lesse lesse. And some tenaunts hold, that if escuage runne by authoritie of parliament to any summe of money, that they shall pay but the halfe of that summe, and some but the fowerth part of that summe. But because ỹ escuage that they shall pay is not certain, for that it is at no certein what the parliament will assesse the escuage, they holde by knights seruice. But otherwise it is of escuage certaine of which shalbee spoken of in the tenure of socage.

And if a man speake generally of Escuage, it shalbee vnderstoode by the common speache of Escuage not certayne, which is knightes seruice. And such escuage draweth vnto him homage, and homage draweth vnto him fealtie, for fealtie is incident to euery manner of seruice, but to the tenure of frank=

frankalmoigne as it shalbe sayde hereafter in the tenure of frankalmoigne. So as hee that holdeth by escuage, holdeth by homage, fealty and escuage.

¶ And it is to be vnderstande, that when escuage is so sessed by authoritie of parliamẽt, euery Lorde of whom the lande is holden by escuage, shall haue the escuage so sessed by the parliament, because it is vnderstande by the lawe that at the beginning such tenementes were geuen by the lords to holde by such seruices to defende their Lordes as well as the king, and to set in quiete & rest their Lordes and the king of Scottes aforesayde. And for that such tenements came first of the Lords, it is reason that they haue ỹ escuage of their tenaunts.

¶ And the Lordes in such case may distraine for the escuage so assessed, or they may haue the kinges writtes directed vnto the Shirifes of the shires to leuie suche escuage for them, as it appeareth by the Register fol. 83.

¶ But of such tenaunts that hold of the king by escuage which were not with the king in Scotlande, the king him selfe shall haue the escuage.

¶ Item in such case aforesayde, where the king maketh a voyage royall into Scotland, and the escuage is assessed by parliamẽt, if the Lorde distreine his tenaunt that holdeth of him by seruice of a whole knightes fee, for the escuage so assessed &c. And the tenant pleadeth

and

and wil auerre that he was with the king in Scotlande &c. by xl dayes, and the Lord will auerre the contrary, it is layde that it ſhalbe tried by the certification of ỹ Marſhall of the kings hoſt in writing vnder his ſeale which ſhalbe ſent to the Juſtices.

¶ Homage, fealtie, and eſtuage.

¶ Enure by homage, fealtie, & eſcuage, is to holde by knights ſeruice, & it draweth vnto it warde, mariage, and reliefe. For when ſuch a tenaunt dieth his heire male being vnder age of xxj. yeres, the lord ſhal haue the land holden of him vnto the age of the heire of xxj. yeres, which is called plain or ful age, for that ſuch an heire by the vnderſtanding of ỹ law, is not able to doe knightes ſeruice before the age of xxj. yere.

¶ And alſo if ſuch an heire bee not maried at the tyme of the death of his aunceſter, then the Lorde ſhall haue the warde and mariage of him. But if ſuch a tenaunt dye, his heire female beeing of the age of fowerteene yere or more, then the lorde ſhal not haue ỹ warde neither of the lande nor of the body, for that a woman of ſuch age may haue an huſbande able to doe knightes ſeruice. But if ſuch an heire female be within the age of fowerteene yere and not maryed at the time of the death of her aunceſter, then the Lorde ſhal haue the warde

warde of the lande holden of hym, tyl the age
of such an heire female of 14. yeares. For that
16 it is geuen by the statute of West. 1. capitul. 22.
that by two yeares next followinge the sayde
14. yeres, the Lorde may tender a conuenient
mariage without disperaginge of suche an heire
female. And if the lord do not tender her such
maryage within the sayd two yeres, then she
at the ende of the sayde two yeare may enter
and put out the lord. But if such an heire fe-
male be maried within the age of 14. yeres in
the life of the auncester, and ỹ auncester die,
she being within the age of 14. yeare, the lord
shal haue but the ward of the lande til an end
of 14. yere of age of such an heire female. And
then her husband and she may enter into the
lande and put out the Lorde, for this is out of
the case of the statute, in so much ỹ the lorde
cannot tender mariage to her that is maried
&c. For before the saide estatute of Westm 1.
suche issue female that was within age of 14.
yeare at the time of ỹ death of her auncester,
and after that shee had accomplished the age
of fowerteene yeare without anye tender of
maryage to her by the Lorde, suche an
heyre female then myghte enter into the
lande and put out the Lorde as appeareth
by the rehearsall, and by the wordes of the
same estatute. So that the said statute was
made in suche case all for the aduauntage of
the Lorde as it seemeth. But yet that at all
tymes it is vnderstoode by the wordes of the
same

ame eſtatute, that the Lorde ſhall not haue the two yere after the xxij. yere as it is afor-ſayde.

¶ And note well that, the full age of the male and female after the common ſpeach, is ſayd the age of xxi. And the age of diſcretion is ſayed the age of xiiij. yeares, for a childe at ſuch age which is wedded within ſuch age to a woman, may agre to the mariage or diſagree.

¶ And if the wardeine in chiualrie marie once his ward within the age of xiiij. year, & after the age of xiiij. yeres he diſagreeth to ỹ mariag. It is ſayed by ſome folke that the childe is not holden by the lawe to bee maryed another time by his wardeine, for that the wardeine had once the mariage of him, and therefore he was out of his ward as cõcerninge the ward of his body. And when he had once the mariage of him, and therefore was out of hys ward, he ſhall no more haue ỹ maryage of hym. In the ſame manner it is if they wardene mary him and the wife die the childe beyng within age of xiiij yeres or xxj. yeares. And that the childe may diſagree to ſuch mariage whẽ he cõmeth to thage of xiiij. yere it is proued by the wordes of the ſtatute of Merton cap. 6. that ſayeth thus. De dominis qui maritauerint illos quos habent in cuſtodia ſua villanis, & aliis ſicut burgenſis vbi diſparagent', ſi tales homines fuerint infra 14. annos, & tali ætatis quod matrimonio conſentire non poſſint,

possint, tunc si parentes illius cõquerant, domin' ille amittat custodiam illã vsque ad etatẽ heredis. Et omne commodum quod inde receptũ fuerit conuertatur in cõmodum heredis infra etatẽ existentis secundũ dispositionẽ parentum, propter dedec' ei impositũ. Si autẽ fuerit 14. annorũ et vltra quod cõsentire poterit, & tali maritagio consenserit, nulla sequatur pena. And so it is proued by the same statute that no disperagement shalbe, but where that hee that hath the warde marieth him within the age of xiiij. yere.

¶ Also it hath bene a question how these wordes should be vnderstand. Si parentes cõquerantur &c. And it semeth vnto some that cõsidering the statute of Magna charta cap. 6. that willeth that heredes maritentur absque dispragatione &c. vpon which this sayde statute of Merton vpon this point is grounded as it seemeth, and in so much that it was neuer sene that any accion was brought vpon the statute of Merton for such desperaging against the wardeine, and if any accion may be taken vpon such matter, it shalbe taken by common presumption before this time, or at some time to be put in vre, that these wordes shalbe vnderstande in such manner. Si parentes conquerantur 1. Si parentes inter se lamentantur, which is as much to saye that if the cosins of such a childe haue cause to make lamentation and complaint among them for the shame done to their cosin so disperazed

which

which is in a manner a ſhame to them al, the
nay the next coſin to whom the heritage may
not diſcend, enter and put out the wardein in
chiualrie. And if he will not, an other coſin of
the childes may do it, & hee to take the iſſues
and profites vnto the vſe of the childe, and of
that yeld the childe accompt when he com=
meth vnto his full age. Or els the childe him
age may enter himſelfe & put out the wardein
&c. ſed quære de hoc.

¶ Alſo there are many other diuers diſpera=
ginges, which be not ſpecified in the ſame eſ=
tatute. As if the heire that is in ward be ma=
ried vnto one that hath but one foote, or one
hand, or els deformed, or laime, or hauing an
horrible diſeaſe, or els a great and continuall
infirmitie, or if the heire male be maried to a
woman paſſed childe bearing. And many o=
ther cauſes of diſperaging there bee, but in=
quire for them, for it is good matter to learne.
And of heires males that bee within age of
xxj. yere after ỹ death of their auncеſters vn=
maried In ſuch caſe the lord ſhall haue the
mariage of ſuch an heire, and haue ſpace and
time to tender to him conuenable mariage
without diſperaging within the ſame time of
xxj. yere.

¶ And it is to witte, that the heire in
ſuch caſe may chuſe if hee will bee mar=
ryed or no. But if the Lorde which is
called wardeyn in Chualrye tender a con=
uenable mariage to ſuch an heire wyth=

in

in the age of xxi. yeare without disperaging, and the heire refuse, and marrie not himself within the same age. Then the said warden shall haue the value of the marriage of such an heire, but if such an heire male mary himselfe within the age of xxi. yeares, against the will of the warden in chualrie: Then shall the warden haue double the value of the mariage by the force of the estatute of Merton aforesaid, as in the same statute is more fully comprised.

¶ And diuers tenants hold of their Lordes by knightes seruice, and yet they holde not by escuage, nor pay no escuage as they that hold their landes by cauelwarde, that is to say, to kepe a tower of a castle, or a gayle, or some other place by reasonable warning, whē their lordes heare tel that enemies wil come, or be come into England. And in many other cases a man may holde by knightes seruice, and yet he holdeth not by escuage, nor payeth no escuage as shalbe sayde in the tenure of Graunde serieantie. But in al cases where a man holdeth by knights seruice, such seruices drawe to the Lordward, and mariage.

¶ And if a tenant that holdeth of his lord by seruice of an whole knightes fee die, his heire being of ful age of xxi. yere, his heire shall pay vnto his lorde C.s. for a reliefe, & he that holdeth by the halfe fee, shal pay l.s.

¶ Also if a man holde his lande of his lorde by the seruice of two knightes fees, then the heire

heire is vnder age at the time of the death of his ancestour, shall pay to his lord ten pound for relefe.

¶ Also if there be graundfather, mother, & sonne, and the mother dyeth liuing the father of the sonne, and after ỳ graundfather which held his land by knights seruice dyeth seised, and the land descendeth to the sonne as heire to the graundfather which is within age. In such case ỳ lord shal haue the ward of the land, but not the ward of ỳ heire. For that none shalbe in warde of his body liuing his father, because the father during his life, shal haue the mariage of his heire apparant, & not the Lorde. Otherwise it is if the father be dead liuing the mother, where the lande holden in chiualrie, descendeth to the sonne on the fathers side.

¶ Also if a man be seised of land which is holden by knights seruice, & maketh a feoffement in fee to his vse, and dieth seised of ỳ vse his heire within age, & no will by him declared, the Lord shall haue a warde of right, of the body and the lande, like as if the tenaunt had died seised of the demeine. And if ỳ heire be of full age at the death of his ancestor, in such a case he shall pay relief like as if he had died seised of the demeine, and that is by the statute of 34.H.8.cap.17.

¶ Also there is a warde in right in chiualry, & a warde in dede in chiualry. Warde in right in chiualry, is where the Lord because of his

lordship is seised of the ward of the land, and ꝯ heire vt supra wardein in deede in chiualrie as where the Lord in such case after his seisin graunteth by deede or without deede the ward of the lande or of ꝯ heire, or of both, to another man, by force of which graunt the grauntee is in possession, then is the grauntee called wardein in deede &c.

¶ Tenure in socage.

TEnure in socage, is where the tenant holdeth of his Lorde his tenauncy by certeine seruice for all manner of seruice, so that the seruice be not knightes seruice. As where a man holdeth his land of his Lord by fealty & certeyne rent for all manner of seruice, or els where a man holdeth his lande by homage, fealtie, and certeyne rent, for all manner of seruices, for homage by it selfe asketh not knightes seruice.

Also a man may hold of his Lord onely by fealty, & such tenure is tenure in socage, for euery tenure that is not tenure in chiualry, is tenure in socage. And it is said that ꝯ cause wherefore such tenure is sayde, and hath the name of tenure in socage, is thus: Quia hoc socag. idē est, quod seruic' soce. Et hec soca soco id'est qd' ꝯuca. s. on sok or on plough lād. And in olde time before ꝯ limitacion of time in mind,

great

great parte of ỹ tenaunts that helde of theyr Lordes by socage, ought to come wyth theyr plowes euery of the said tenants by certeine dayes in the yere, to eare and sowe ỹ Lordes lands of his owne graines. But for that such worckes were done for the lyuelode and sustenaunce of their Lords, they were acquited against their Lord of all manner of seruices. And for this ỹ such seruice was done with their plowes, such tenure was called tenure in Socage. And after ỹ such seruices were changed in diuers other manner seruices by consent of the tenauntes, and by the desire of their lordes, that is to say, into a yercly rent &c. But yet the name of Socage abideth, and in diuers places tenaunts yet do such seruice with their plowes vnto their Lorde, so that all manner of seruices that be not tenures by knightes seruice be called tenures in Socage.

¶ Also if a man hold of his Lord by escuage certaine. That is to say in such fourme, that when escuage renneth and is assessed by the Parliament to a more sũme or to a lesse sũme, that the tenaunt shall pay to the Lorde but halfe a marke for escuage. and neyther more ne lesse, to how great summe or lyttle summe ỹ the escuage runneth, in this case, because ỹ escuage is in certeine before that any escuage is assessed &c. Such tenure is tenure in Socage and not knightes seruice. But where ỹ

ſumme that ỹ tenaunt ſhall pay for eſcuage, is not certeine, that is to ſay, where it may bee that the ſumme that the tenaunt ſhall pay for eſcuage may be at one time more & another leſſe, after that it is aſſeſſed &c. then ſuch tenure is tenure by knights ſeruice.

¶ Alſo if a man hold his land for to pay certeine rent to his lord for caſtle ward, ſuch tenure is tenure in ſocage. But where the tenant himſelfe ought by him or by any other to make caſtleward, ſuch is tenure by knightes ſeruice.

¶ Alſo in all caſes where the tenaunt holdeth of his Lorde to pay to him any certeine rent, that rent is called rent ſeruice.

¶ Alſo in ſuch tenures in ſocage if the tenant haue iſſue and die, his iſſue being within the age of 14. yeres, then the next frend of ỹ heire to whom the herittage may not diſcende ſhall haue the warde of the lande, and of the heire vnto the age of the heire of 14. yeres, and ſuch wardeine is called wardeine in Socage. For if land diſcend to the heire by the fathers ſide, then the mother, or ſome other nygh cozin of the mothers ſide ſhal haue the warde. And if land diſcend to the heire by the mothers ſide then the father or the next freind of ỹ fathers ſide ſhall haue the ward of ſuch landes or tenements. And whē the heire commeth to the age of 14. yeres complete, hee may entet & put out his wardeine in Socage, and occupie the land himſelfe if he will. And ſuch warden in

ſocage

socage shall take no issues or profites of such lands or tenements to his owne vse, but only to the vse and profite of the heire, and of that shal yelde accompt when it pleaseth the heire after that the heire hath accomplished ꝑ age of foureteene yeres. But such a warden vppon such accompt shall haue allowance, of all his reasonable costes and expences of all thinges. And if such a wardein mary the heire within age of fowerteene yere, he shal make accompt to the heire or to his executours of the value of the mariage, though he toke nothinge for the value of the mariage, for that it shalbee rected his owne folly, that he woulde marie him without taking the value of the maryage without hee marie him to suche a mariage that is worth in value as much as the mariage of the heire &c. Also if any other man that is not a nygh frend &c. occupy the landes and tenements of the heire as wardein in socage, hee shalbee compelled to yelde acompte vnto the heire, as well as his nexte frende. For it is no plee for hym in a writte of accompt to say that hee is not hys nygh frende &c. But hee shall aunswere whether hee occupyeth the landes or tenementes as warden in socage or not. But inquire if after that the heire haue accomplished the age of fowertene yere, and the warden in socage continually occuppeth the lande till the heire commeth to full age of xxi yeres: If the heire at his full age shall haue an accion of accompt agaynst

the wardein for the time that he hath occupyed after the saide fowerteene yeares, as against his wardein in socage, or against him as against his bailife.

¶ Also if wardeine in chiualrie make his executours, and dye, the heire being within age &c. The executours shall haue the warde, duryng the nonage. But if the wardeine in Socage make executoures and die, the heire beinge within the age of fowerteene yeares, hys executours shal not haue the warde, but an other nygh frende to whom the herytage may not discende, shall haue the warde. And the cause of diuersitie is, for that the wardein in chiualry hath the warde to his proper vse, & the wardein in Socage hath not the ward to his owne vse, but to the vse of the heire. And in such case, where ỹ wardein in socage dyeth before any such accompt made by him, the heire is of that without remedye, for that no wryt of accompt lyeth against ỹ executors but onely for the king.

Also the lorde of whom the land is holden in Socage after the death of hys tenaunt, shall haue relefe in suche fourme. If the tenaunt holde by fealtie, and certayne rent to paye yearely &c. If the termes of payment bee to pay by two termes of the yeare, or by fower termes of the yeare, the Lorde shall haue of the heire of hys tenaunt, as much as the rent amounteth that he shoulde paye by yeare. As if the tenaunt holde of the

Lorde

Lord by fealtie, and 5. shillinges of rent, paia-
ble at certaine termes of the yere, the heire
shal pay to the lord. 5.s. for relefe about these
5.s. that hee shal pay for the rent. Lode more
in the statute of Anñ 19. Henry the seuenth
Cap. 15.

And in suche case after the death of the te-
nannt, suche relefe is due to the lord inconti-
nent of what age soeuer the heire be, for that
such a Lorde may not haue the warde of the
body nor the lande of the heire. And the Lord
in such case ought not to abyde the payement
of his relefe after the termes and dayes of
payment of the rent, but he ought to haue his
relefe incontinent. And therefore hee may
incontinent distreine after the death of his
tenant for the relefe. In the same maner it
is, where a tenaunt holdeth of his Lord by
fealtie, and by a pound of Cummin, or a pound
of Pepper by the yere, & the tenant die, the
lorde shal haue for his relefe a pound of Cu-
min or a pound of Pepper.

In the same manner is it where the te-
nant holdeth to pay by yere a certeine num-
ber of Capons, or Hênes, or a pair of gloues,
or certeine bushels of wheate and suche other
manner thinge. But in some case the Lorde
ought to abyde to distraine for his relefe til a
certaine time.

As if the tenant hold of his Lord by a rose
or by a bushell of roses to pay at the feast of
S. Jhon Baptist. If suche a tenaunt die in
winter, then the Lorde may not distraine for

his reliefe &c. vntill the time that the roses by the course of the yere may haue their growinges &c. vt sicde similibus. Also if any peraduenture will aske why a man may not holde of his lord by fealty onely for al maner of seruices, in so much ỹ when the tenãt shal make his fealty, he shall sweare to his lorde that hee shall doe all seruices due, and when he hath made fealtie in such case, there is none other seruice due. To this it may be saide ỹ where the tenant holdeth his land of his lord, it behoueth that hee ought to do to his lorde some manner of seruice, for if the tenant nor hys heires ought to do no maner of seruice to his lord nor to his heire, then by long time continued it should be out of remẽbrance of whom the land was holden, of ỹ lord or of his heire or not and then more oft and more sooner will men say that the land is not holde of the lord nor of his heires, then otherwise: and vppon this the lord shal lose his eschete of his lande, or perchase other forfaiture or profite that hee might haue of the land. So it is reason that ỹ lord & his heires haue some seruice done vnto hym for a proofe and a witnes that the lãd is holden of them, & therfore fealty is incident to al mãner tenures, except tenure in frankalmoigne as shalbe said in frankalmoigne. & because ỹ the lorde will not at the beginning of ỹ tenure haue any other seruices but fealty, it is reason ỹ a man may holde of his lord onely by fealty, and when hee hath made his fealte, he hath done al his seruice.

¶ Also

¶ Also if a man let to an other for terme of
ife certayne landes or tenementes without
yealding of any thing to yealde to the lessors,
et he shall doe to the lessour fealtie, for that
ee holdeth of him. Also if a lease bee made to
man for terme of yeres, it is said ẏ lessee shal
o to the lessor fealty, for ẏ he holdeth of him.
nd this is proued well by the wordes in a
rit of waste when the lessour hath cause to
ing a writ of waste against him, the which
rit shall say that the lessee holdeth the tene=
ments of the lessour for terme of yeres. So ẏ
rit proueth a tenure betwene thē &c. but he
hat is tenaunt at will after the course of the
cōmon law, shall not make fealtye, because he
hath no maner of a sure estate. But otherwise
t is of tenāt after the custome of the maner,
ecause that he is bound to do fealty to his lord
or two causes, one is because of custome, the
ther is because ẏ he taketh his estate in such
ourme to do fealtie.

¶ Frankalmoigne.

Tenaunt in frankealmoigne is, where an
Abbot or priour, or an other mā of religiō,
or of holy church, holdeth of his lord in frā=
almoigne, that is to say, in latin. In liberam e-
lemosinam, that is to say, in free almes.

And such tenure began first in olde tyme,
when a man in olde tyme was seised of lands
or tenementes in his demesne, as of fee, and

of the

of the same lande enfeoffed an Abbot and his couent, or priour & his couent, to haue and to hold of them and their successours in pure and perpetuall almes, or in frankenlmoigne, or by such wordes, to holde of the graunton or of the iessour and his heires in free almes. In such case the tenementes were holden in frankealmoigne, and in the same manner it is where the lands or tenements were graunted in olde time to a Deane & Chapter and to their successors, or to a person of a church & to his successors, or to any other man of holy church & to his successours in free almes, if he had capacitie to take such graunces & feoffements &c. and such as holde in free almes be bound of right afore God to do orisons, prayers, & masses, & other diuine seruices for the soules of the grauntours or feoffours, & for the soules of their heires which be dead, and for the prosperitie and good life of them that be a liue.

¶ And for this they do at no time no manner of fealtie vnto their lords, for ỹ such diuine seruice is better for thē before God, than any dutie of fealtie, and also these words free almes, or frankealmoygne, exclude the lord to haue any wardly or temporall seruice but onely to haue diuine and spirituall seruice to bee done for him &c. And if such that holde their tenementes in free almes, or franke almoygne will not, or fayle to doe such diuine seruice as is sayde, the Lorde maye not distraine them for the seruices vndone &c. because

cause it is not set in certaine, what seruice they ought to do: but the Lord may of them complayne to their Ordinary, praying him that he will sette punishment and correction of that. And also to prouide and see that such negligence be no more done, and the ordinarie of right ought to do that &c.

¶ But where an Abbot or a prior holdeth of his lord by certeine diuine seruice in certeine to bee done, as for to sing a masse euery fryday in the weeke, for the soules &c. or euery yeare at such a day to singe Placebo & Dirige &c. or to finde a chapleine to sing masse &c. or to distribute in almes to an hundred powre men an hundred pence at such a day, in such case if such diuine seruice be not done the lorde may distreine &c. for that this diuine seruice is in certeine by their tenure what the abbot or prior ought to do. And in such case the lorde shal haue the fealty &c. as it seemeth.

And such tenure is not sayd tenure in free almes, but it is saide tenure by diuine seruice, for in tenure in free almes, or franke almoigne, no mencion is made of any manner certeine seruice, for none may holde in free almes or franke almoygne if there be expressed any manner certeine seruice that he ought to do.

¶ And if it be demaunded if the tenaunt in frankmariage shall doe fealty to the donour or to his heires before the fowerth degree be passed &c. It seemeth that yea, for he is not

lyke

lyke as to this intent to a tenaunt in fre almes or franke almoigne for ꝑ the tenant free almes shall doe (because of his tenure deuine seruice for the lord as it is aforesaid that hee is charged to do by the lawe of hol Church, and for that hee is excused and dy charged of fealtie. But tenant in franke ma riage doth not by his tenure such seruice.

And if he do not to his lord fealtie, then h doth not to his Lorde any manner of seruic neither spirituall nor temporal, which shoul be an inconuenience and against reason, tha a man should haue estate of inheritance of a other, and yet the lorde shal haue no manet seruice of him as it seemeth, and so it seeme that he shal do fealty to his Lorde vntill th folwerth degree be past &c. And when he hat done fealty, hee hath done all his seruice. A if an Abbot holde of his lorde in free almes, the Abbot and his couent vnder their cõmo seale, alien the same land to a seculer man i fee simple, in this case the seculer man shal do fealtie to the lord for that he may not hol of his lorde in free almes, for if ꝑ lorde ought not to haue of hun fealtie, then hee shall hau of him no manner of seruice which should b an inconuenience where he is Lorde, and th tenements are holden of him.

¶ Also if a mã grant at this day to an abbot or to a priour, lands or tenements in free al mes or franke almoygne, these wordes fre almes or franke almoygne be voyde, for that

it is

e is ordeyned by the statute which is called Quia emptores terrarum, which statute was made Anno 18. Regis E. primi. That no man may alien or graunt landes or tenementes in fee simple to hold of him selfe, so y if a man be seised of certeine land or tenements which he holdeth of his lorde by knightes seruice & at this day he graunteth the same land to an Abbot &c. in free almes or franke almoygne, y Abbot shall holde immediatly the same tenements by knightes seruice of the Lord of his graunter, because of the same estatut: so that no man may holde in free almes or in franke almoigne, but if it bee by title of prescription, or by force of a graunt made to some of his predecessours before the same estatue. But y king may geene landes or tenementes in fee simple to hold in free almes or franke almoigne or by other seruice, for he is out of the case of the statute, and note well that no man may hold landes or tenements in free almes, but of the graunter or his heires and that for the limitie of the gifte, and therefore it is sayde that if there be lord meine and tenaunt, & the tenant is an Abbot that holdeth of his meine in franke almoigne, if the meine die without heire, then the meinalty shal come by eschere to the said Lord aboue, & the Abbot then shal hold of him immediatly only by fealtie, & shal do him fealty, for that he may not hold of him in franke almoigne &c.

¶ And note wel, where that such a man of reli=

religion holdeth his lands of his Lord in fr
aimes &c. his lord is bound by the law to a
quite him of euery manner of seruice that a
lord aboue him wil demand or aske of ꝯ la
tenants. And if he acquite him not but sue
him to be distrained &c. then he shall haue a
gainst his lord a writte of meine, and recou
his dammages & costs of his suit.

¶ Homage auncestrel.

TEnure by homage auncestrell is, when
tenant holdeth his land of his lorde by h
mage, and the same tenant & his auncesto
whose heire hee is, haue helde the same lan
of the said lorde and of his auncesters, who
heire ꝯ lorde is, from time out of mind by h
mage, & haue doe homage vnto him which
called homage auncestrel because of the co
tinuance which hath been by title of prescri
tion in the tenancy, in the blood of the tena
& also in the lordship in the blood of the Lo
And such seruice by homage auncestrel dr
weth to it warrantie, if the Lorde that is
sue hath receiued homag of such tenaunt,
ought to warrant his tenant when he is im
pleded of the lands holden of him by homa
auncestrell. And all such seruice by homa
auncestrell drawerh to it acquittaunce, th
is to say, the Lorde ought to acquite his te
naunt against al other lordes aboue him of
very manner of seruice, And it is saide that
such tenaunt be impleded by a Precipe quo
redd

ddar &c. and hee voucheth his lord to war=
nty, which cōmeth in by proceſſe, & aſketh
f the tenaunt what he hath to binde him to
arranty, and hee ſheweth how hee and his
uncesters whoſe heire he is, haue holden the
nde of the vouchee and of his aunceſtours,
hoſe heire he is, by homage from time out
f mind: if the lord which is vouched recei=
ech none homage of the tenant, nor of any of
is aunceſters, ẏ lord then if he will, may diſ=
ayme in the lordſhip, and ſo put out his te=
aunt of his warranty. But if the lord which
s vouched hath receiued homage of ẏ tenant
of any of his aunceſters, then may hee not
iſclaime, but hee is bound by ẏ law to war=
ant the tenaunt, and then if the tenant loſe
he lande in default of the vouchee, he ſhal re=
ouer in value againſt ẏ vouchee of the lāds
tenements that the vouchee had at ẏ time
f the voucher or any time after. And it is to
oete that in euery caſe wher the Lord may
iſclaime in his lordſhip by the law, in court
f Record, and of that will diſclaime, his ſeig=
iourie is extinct. and the tenaunt ſhall holde
f his Lorde next aboue the Lorde which ſo
iſclaimeth. But if an Abbot or Priour bee
ouched by force of homage aunceſtrell &c.
hough he haue neuer taken homage &c. yet
e cannot diſclaime in this caſe nor in none
ther caſe, for they cannot deueſt that thing
n fee which hath bene veſted in their houſe.
aſche 10. E. quarti.

¶ Alſo

¶ Also if a man that holdeth his land by ho-
mage auncestrel alieneth his land to an oth-
in fee, the alienee shall do homage to his lo-
But he holdeth not of his Lorde by homa-
auncestrel for that ꝯ tenaunce was not co-
tinued in the blood of the auncestours of th
alienee, nor ꝯ alienee shal neuer haue ꝯ war-
rātie of his land of his Lorde, for that the co-
tinuance of the tenaunce in the tenaunt an
in his blood by ꝯ alienation is discontinued,
so see that the tenaunt that holdeth his lan
by homage auncestrel of the Lorde, and suc
a tenaunt alieneth in fee, though that he tak
estate of the alienee again in fee, hee holdet
the land by homage, but not by homage an-
cestrell.

¶ Also it is said, that if a man hold his lan
of his lord by homage and fealtie, and he ha
made homage and fealtie to his lord, and th
lord hath issue a sonne, and dieth, & the lord-
ship descendeth to his sonne. In this case
tenaunt which did homage to the father, sh
not do homage to his sonne, for that when
tenaunt hath made once homage to his lorde,
he is excused for terme of his life to make ho-
mage to any other heire of the lorde. But yt
he shal do fealtie to the sonne and heire of hi
Lorde, though that he made fealtie to his fa-
ther.

¶ Also if the lord after the homage to hi
made by his tenant, graunt the seruice of his
tenaunt by deede vnto another in fee, and th

tenaunt

tenaunt attorneth &c. the tenaunt shall not be compelled to do homage but he shall do fealty though he did fealtie before to the grauntor, for fealtie is incident to euery attournement when the lordship is graunted. But if a man be seysed of a manour, and a nother man holdeth his lande of him as of a manour aforeland by homage, the which hath done homage to his lord which is seised of the manour, if after that a straunger bringe a Præcipe quod reddat against the lord of the manour, & recouereth ꝯ manour against him and sueth execution &c. in this case the tenant shal once againe do homage to him that recouereth the manour, for that the state of him which receiued homage before is defeated by ꝯ recouery. And it shall not lie in the mouth of the tenant to falsifie or defeat the recouery which was against his Lord, & so see the diuersity in this case where a man cõmeth to his lordship by recouery, & where he commeth by discent or graunt of the seigniory.

¶ And if a man tenaunt which ought by his tenure to do homage to his Lord come to his lord and say to him, Sir, I owe to do vnto you homage for the tenements that I hold of you and I am redy to do you homage for the same tenements for the which I pray you that yee wil now receiue it, and if the lord then refuse to receiue it, then after such refusall the lord may not distraine the tenant for the homage before that the Lord require the tenant to do

homage, and the tenant refuſe to do it.

¶ Alſo a man may hold his lande by homage auncestrel, & by eſcuage, or by other knightes ſeruice, as wel as he might hold his lande by homage auncestrel in Socage.

¶ Graund ſergeantie.

TEnure by graund ſergeantie is, where a man holdeth his lands or tenements of our ſoueraigne lord the king, by the ſeruice which he ought to do in his owne proper perſon, as to beare the kings banner or his ſpeare, or to lead his hoſt, or to be his marſhal, or to beare his ſword before him at his coronation, or to be his ſewer at his coronation, or his keruer, or butler, or to be one of his Chamberleynes of his reſceit of his Eſchequer, or to do ſuch ſeruices &c. and the cauſe wherefore ſuch ſeruice is called graund ſergeantie, is for that it is more honorable, & worſhipful, & digne, then is ẏ ſeruice of ẏ tenure by eſcuage, for he that holdeth by eſcuage, is not limitted by his tenure to do any more eſpecial ſeruice then any other ẏ holdeth by eſcuage ought to do. But he ẏ holdeth by Graunde ſergeantie, ought to do ſome eſpecial ſeruice to ẏ king. that he that holdeth by eſcuage ought not to do.

¶ Alſo if the tenaunt which holdeth by eſcuage die, his heire being of full age, if he helde by a knyghtes fee, the heire ſhall pay but an C.s. for his reliefe, as it is ordeined by the ſtatute of Mag. charẽ cap. 2, but he ẏ holdeth

deth of the kinge by graunde sergeantie and
deth his heire being of full age, shal pay vn=
to the kinge for his relefe, the value of his
lands or tenemẽts by the yere, besides ỹ char=
ges and reprises which he holdeth of the king
by graund sergeantie. And it is to weete, that
serieauntie in latine is seruicium, & of magna
seriantia is magnum seruicium, that is to say, a
great seruice.

¶ Also those which holde by escuage ought
to do their seruice out of the realme, but they
that holde by graund sergeantie for the most
part ought to doe their seruice within the
realme.

¶ Also it is said ỹ in the Marches of Scot=
land some holde of the kinge by cornage, that
is to say, to blowe an horne for to warn the
men of the cuntrey &c. when they heare that
the Scots or other enemies wil come or en=
ter into England &c. which seruice is graũd
sergeantie &c. but if any tenaunt hold of any
other Lorde thẽ of the king by such seruice of
cornage, that is not graũd sergeanty, but it is
knights seruice, & draweth to it ward, mari=
age, & relefe, for none may holde by graunde
sergeantie but of the king only.

¶ Also a man may sæ in the xi. yere of Henry
the fowerth that Cokein then beeing chiefe
baron of Ehescheqer came into the common
place bringing with him a copie of a recorde
in these wordes. Talis tenet tantam terram de
Domino Rege per Scriantiam ad inueniendum

vnum hominem ad guerram infra quatuor mars &c. That is to say, such a man holdeth so much land of our soueraigne Lorde the king by sergeanty to finde one man appointed for the warre within ꝯ fower seas, & he demaunded whether it was graund sergeantie or petty sergeantie. & Hank. then saide that it was graunde sergeanty, for that it was seruice to be done by the body of a man, & if that he may not finde a man to do seruice for him, he must do it himselfe. To whom the other Iustices assented, Cokein then said, the tenant in this case shall pay reliefe to the value of the lande by yeare, to the which was none aunswere. & note that al they that hold of ꝯ king by graūd sergeanty, hold of ꝯ king by knightes seruice, & the king of that shal haue ward, mariage, & reliefe, but ꝯ king shal not haue of them escuage, if they hold not by escuage.

Petit sergeantie.

Tenaunt by petit sergeantie is where a manne holdeth his land of our soueraigne Lorde the kinge to yeeld vnto him yearely a Bowe, a swoorde a dagger, or a knyfe, or a spere, or a paire of gloues of Mayle, or a paire of spurs gilt, or an arrow, or diuers arrowes, or to yeelde such other small thinges touching the warre, and such seruice is but socage in effect, for that that the tenaunt by his tenure ought not to goe nor to do any thinge in hys owne

owne proper person touching ꝑ warre. But to yelde and pay yerely certaine thinges vnto the kinge as a man ought to pay a rent. And note ꝑ no man hodeth lande by graunde sergeauntie nor by petite sergeauntie, but of the kinge.

¶ Burgage.

TEnure in Burgage is where an auncient Borough is, of the which the king is lord, and they that haue tenemẽts within the borough holde of the king their tenements, that enery tenaunt for his tenement ought to pay to the king a certeyne rent by yeare &c. And such tenure is but tenure in Socage, and the same maner is where an other lord spirituall or temporall is Lorde of such a borough, and the tenaunts of the tenementes in such a borough hold of their Lorde to pay eche of them yerely an annuel rent, & it is called tenure in Burgage, for that the tenements within the borough be holden of the lorde of the borough by certaine rent &c. And it is to wit that the auncient Townes called Boroughes bee the most auncient and eldest Townes that bee within Englãd, for the townes that now be cities or countes, in olde time were boroughs and called boroughs, for of such olde townes called boroughs came these Burgesses of the Parliament to ꝑ Parliament when the king hath summoned his Parliament.

¶ Also for the greater part such boroughes haue diuers customes and vsages which be not had in other Townes, for some borough hath such a custome, that if a man haue issue many sonnes and dieth, the yongest sone shal inherite al the tenemēts which were his fathers within the same borough as heires vnto his father, by force of ꝑ custome, the which is called borough English.

¶ Also in some boroughs by the custome, the wife shal haue for her dower al the tenemēts which were her husbands.

¶ Also in some borough by the custome, a mā may deuise by his testament his lāds and tenements which he hath in fee simple within the same borough at ꝑ time of his death, & by force of such deuise he to whom such deuise is made after the death of the deuisour, may enter into ꝑ tenements to him deuised, to haue and to hold to him after the fourme and effect of ꝑ deuise without any liuery of seisin thereof to be made to him.

¶ Also though a man may not graunt nor geue his tenementes to his wyfe during the couerture, for that that his wife & he be but one person in the law, yet by such custome he may deuise by his testament his tenementes to his wife to haue and to holde to her in fee simple, or in fee tayle, or for terme of life, or of yeres, for ꝑ such deuise taketh none effect, but after the death of the deuisor. And if a man at diuers times make diuers testaments and di-

uers

uers deuises &c. yet the last deuise & will made by him, shal stand and abide.

¶ Also by such custome a man may deuise by his testament that his excutoures may alien and sel the tenements that he hath in fe simple for a certeine summe, to distribute for the soule, in this case though the deuisour die seised of the tenements, and the tenements discend vnto his heire, yet the executours after the death of ỹ testatour may sel the tenemẽts so deuised, and put out the heire, and thereof make a feoffement, alienation, and estate by deede or without deede, to them to whom the sale is made vnto.

¶ And so may ye see here a case where a man may make a lawfull estate, and yet hee hath nought in the tenementes at the time of the estate made, and the cause is for that, that the custome and vsage is suche. Quia consuetudo ex certa causa rationabili vsitata, priuat communem legem. For a custome vsed vppon a certeine reasonable cause, barreth ỹ cõmon law. And note wel, no custome is to be allowed, but such custome as hath ben vsed be title of prescription, that is to say, from time whereof is no minde. But diuers opinions haue bene of time out of minde, & of title of pscription which is all one in ỹ law, for some men haue said ỹ the time of minde should be saide for time of limitatiõ in a writte of right, ỹ is to say, frõ the time of king Richard ỹ first after ỹ Conquest, as is geeuen by the statute of

E.iiij. west-

westminster the first, for that a writt of right is the most highest writte in his nature that may be. And in such a writt a man may recouer his right of the possession of his auncesters of the most auncient time that any man may by any writ by the law. And in so much that it is geuen by the saide estatute, that in such a writ none shalbe heard to aske of ẏ seison of his auncesters of more longer time thē of the time of king Richard aforsaide, therefore this is proued that continuance of possession or other customes and vsages vsed after the same time is title of prescription, and this is certeine. And other haue sayde that well and trueth it is, that seisin and continuaunce after the limitation &c. is a title of prescription as is aforesaide and by the cause aforesaide. But they haue saide that there is also an other title of prescription that was at the common law before any estatute of limitation of writtes &c. and that it was where a custome or vsage or other thing had ben vsed for time wherof minde of man rūneth not to the contrary, and they haue saide ẏ this is proued by ẏ pleading where a man will plede a title of prescription of custome &c. he shal say that such custome hath beene vsed from time wherof the memory of men runneth not to ẏ contrary, that is as much to say, when such a matter is pleded that no man thē aliue hath heard one proofe to the contrary, nor hath no knowledge to the contrary, and in so much ẏ such

ech title of prescription was at the common
awe and not put out by any estatute. Ergo it
bideth as it was at the common law, and ꝯ
oner in so much that the said limitation of a
rit of right &c. is of so long time passed.
deo quere de hoc, & many other customes and
sages haue such auncient boroughs.
¶ Also euery borough is a towne, but not
the contrary, more shalbe saide of customes in
the tenure of villenage.

¶ Villenage.

Enure in villenage is most properly when
a villein holdeth of his Lord (to whom he
is villeine) certaine landes & tenementes af-
ter the custome and manner, or els at the wil
of his Lord, and to do his villaine seruice, as
to beare, bringe, and carry out, the dounge and
filth of the Lord vnto ꝯ land of his lord, there
to lay it cast it, and spread it abrod vppon the
land, and to do such other manner of seruice, &
some free tenaunts hold their tenements af-
ter the custome of certeine manours by such
seruice, & their tenure is called tenure in vil-
lenage, & yet they be no villeines, for no land
holden by villenage or villeine landes, or any
custome rising of the land shal neuer make a
free mã villein. But a villeine may make free
lãd to be villein lãd vnto his lord, as if a vil-
lein purchase land in fee simple or in fee taile,
the Lord of the villeine may enter into ꝯ land
& put out ꝯ villeine & his heires for euer, and

after

after the lord (if he will) may let the same lād to the villeine, to holde in villenage.

¶ Also if a feffemēt be made to a certain person or persons in fee, to the vse of a villeine, or if a villein or any other persons be enfeoffed to the vse of a villeine, what estate soeuer the villein hath in ꝑ vse, in fee taile, for terme of life, or yeres, the lord of ꝑ villeine may enter in al those lands and tenements likewise as if the villeine had bene alone seised of the demesne. And that is by the statute of Anno 19. H. 7. ca. 15. But if a free man will take any lāds or tenemnts of his lord by such villein seruice, that is to say, to pay a fine to his lord for his mariage, or for ꝑ mariage of his sonne or his daughter, then shall hee pay such a fine for the mariage &c. for that it is the follie of such a free man to take in such fourme lands or tenementes to holde of hys Lorde by such bondage, yet that maketh not the free manne villaine.

¶ Also, euery villeine, either he is villein by prescription, that is to say, he and his auncesters haue bene villeines time out of mind, or he is villein by his owne cōfession in court of recorde. But if a free man haue diuers issues, and after cōfesseth himselfe to be villein to another in court of recorde, yet his issues which he hath before ꝑ confession be free, but the issue which he shal haue after the confession &c. shalbe villeines.

¶ Also if a villein purchase lands and alie-

neth

neth the same lāds to another before his lord enter, thē the lord may not enter, for it shalbe iudged his owne folly that he entred not whē the lande was in the villeines hands. And so it is of his other goods, for if the villein buy & sel, or geue goods to another before that the lord seised the goods, then the Lorde may not seise thē, but if the lord before any such sale or gift commeth within the house of the villeine where such goods be, & there openly among ỹ neighbours claime the same goods to be his, and so seise parcel of the same in name of seisin of all the goodes &c. This is sayde a good seisin in the law. And the occupation that the villein hath after such claime in ỹ goods, shall be taken in the lawe, the right of the Lorde. But if the kinge haue any villeine that purchaseth lands & alieueth before that the king enter, yet the kinge may enter in the lande in whose handes the land commeth to. Or if the villeine buy or sel diuers goodes before that the kinge seise the goodes, yet the kinge may seise them in whose handes soeuer they bee. Quia nullum tempus occurrit regi, for no time renneth against the king.

¶ Also if a manne let lande to another for terme of life, sauing the reuersion to him, and a villaine purchaseth of the lessour the reuersion, in this case it seemeth that the Lord of the villaine may incontinent come to the lande and claime the same reuersion as Lord of the same villaine, and by thys clayme,

the

the reuerſion is incontinēt in him, for in any other forme he may not come to the reuerſion for he may not enter vpon ꝯ tenant for terme of life, and if he ought to auoide till after the death of the tenant for terme of life, thē happely he might come to late, for perauentur ꝯ villayne wyll graunt or alyen it an other in the life of the tenant for terme of life. In the ſame maner it is where a villein purchaſeth the auowſon of a church full of an incumbēt, that the Lorde of the villeine may come to the ſaide Church and clayme the aduowſon, And by this claime the aduowſon is in him, for if he abide till after the death of the incūbent and then preſent his clerke to the ſaide Church: Then in the meane time the villein might alien the auowſon ꝛc. ꝛ ſo put out the Lord from his preſentation.

¶ Alſo there is a villeine regardant ꝛ a villaine in groſſe. Villaine regardant is as if a man be ſeiſed of a manour to which a villein is regardant, and he that is ſeiſed of the ſayd manour, or they whoſe eſtate he hath in the ſame manour haue bene ſeiſed of the ſaid villein ꝛ of his auncеſters as villains regardāt to the manour from time out of minde, And villein in groſſe is where a man is ſeiſed of a manour to the which a villeine is regardant, he graunteth the ſame villeine by his deede vnto an other, thē he is villein in groſſe, and not regardaunt.

¶ Alſo if a manne and his auncеſters

whoſe

whose heire hee is, haue bene seysed of a villaine and of his auncestours as villeines in grosse time out of minde, such bene villaines in grosse. and note well that of such thinges which may not bee graunted nor alyened without deede or fine, a man that will haue such thinges by prescription may not otherwise prescribe but in him and his auncesters whose heire he is, and not by these wordes, in him and in those whose estate he hath, for that ꝑ he may not haue their estate without deede or writing ꝑ which behoueth to be shewed to the court if hee will haue any auantage of this, ꝑ because that the graunt and the alienation of a villeine lieth not without deede or other writinge: a man may not prescribe in a villein in grosse without shewing of writing, but in him selfe ꝑ claimeth the villein and in his auncesters whose heire he is. But of those thinges which bee regardaunt or appendant to a manour or to other landes or tenementes, a man may prescribe that hee and they whose estate he hath were seised of the manour or of such lands or tenements as regardauntes or appendauntes to the manour or to such landes or tenementes &c. from time out of minde, and the cause is for this that such a manour, lands and tenementes may passe by alienation without deede &c. And it is to witte ꝑ nothing is named regardāt to a manour but a villein. But certaine other thinges as auowsons and

commune

commune of pasture &c. be named appendaū
tes to the manour or to other landes and te-
nementes.

¶Also if a man in court of Record knowe-
ledge him selfe to bee villeine that neuer was
villeyne before, suche one is villeyne in
grosse.

¶Also a man that is villeine is called vil-
leine and a woman that is villeine is called
niefe, and a man that is outlawed is called
an outlaw, and a woman that is outlawed is
called a wayue.

¶Also if a villein take a free womā to wife,
the issue betweene them shalbe villeine. But
if a niefe take a free man to husband, their is-
sue shalbe free. And that is contrary to ỹ law
ciuile, for there hee sayeth that partus sequi-
tur ventrem.

¶Also no bastard may be villeine, but if the
he wil knowledge himselfe to be a villeine in
court of Record, for he is in the lawe quasi
nullius filius, as the sonne of no man, for the
he may be inheritour to no man.

¶Also euery villeine is able and free to sue
al māner of actions against euery person ex-
cept against his Lord to whom he is villeine,
and yet in certaine thinges hee may haue a-
gainst his lord an action as of appelle for the
death of his father, or of his other auncestors
whose heire hee is, also a niefe which is ra-
uished by her Lorde may haue appele of rape
against him.

¶Also

¶ Also if a villeine bee made executour to another, and the Lord of the villein was indebted to the testatour in a certeine summe of money the which is not paied, in this case ỹ villeine as executour to ỹ testatour shal haue an action of debt against his lord, because he shal not recouer the debt to his proper vse, but to the vse of the testatour.

¶ Also the Lorde may not take of the possession of such a villeine that is executour of the deads goods, and if hee doo, the villeine as executour shall haue an action of Trespas against his Lorde for the same goods so taken, and recouer dammages to the vse of the testatour. But in all these cases it behoueth the lord (which is defendaunt in such actions) to make protestation that ỹ plaintife is his villeine, or els the villeine shalbe enfraunchised though ỹ matter be found for the lord against the villeine, as it is said.

¶ Also if a villeine sue an action of Trespas or other action against his Lorde in one shire, and the Lorde sayeth that hee shall not bee aunswered, for that he is villeine regaraunt to his Manour in an other Shire, and the pleyntife sayeth that hee is franke and of free estate and no villeine, this shall bee tryed in the Shire where the plauntife hath conceyued his action, and not in the shire where there Manour is, and this is in fauor of liberty, as it is audged. M. 40. E. 3.

And

And for this cause was made a statut in the
ix. yere of Richard the second the tenure
which ensueth in suth forme.

¶ Also for that where many villaines and
neifes as wel of great lords as of other folk
spirituall and temporal, flee & go into Citie
and places fraunchised as the citie of Londo
and other like places, and saine diuers suits
against their lords because they would mak
thēselues to be enfraunchised, it is accorded
assented that the lords nor none other shall
forbarred of their villaines because of thei
aunswere in the law. By force of which sta
tute if any villeine will sue any manner
action to his owne vle in any shiere where
is hard to trie &c. against his lord, his Lor
may chose to plede that ꝯ plaintike is his vil
lain, or to plede another matter in barre, an
if they be at issue and the issue bee founde i
the Lord, thē the villain is villain as he wa
before by force of the same statute. But if th
issue be found for the villeine, then is the vil
laine franke and free for that the lorde tol
not for his plee that ꝯ villeine was his vil
laine, but toke it by protestation.

¶ Also the Lorde may not mayme his vil
laine, for if he mayme his villaine he shall
that bee indicted at the kinges suite. And
he bee of that attainted, he shal for that ma
greeuous fine and raūsome to the king. B
it seemeth that ꝯ villeine shall not haue by t
lai

lawe any appelle of mayme against his Lord, for in appelle of mayme a manne shall not recouer but his dammages And if the villeine in that case recouer dammages against his Lorde, and hath thereof execution, the Lorde may take that that the villaine hath in execution from the villaune, & so the recouery standeth voide.

¶ Also if the villaine be demaundant in an action real or plauntife in an action personel against his lord, if the lord wil plede in disability of his person, he may not make plaine defence, but he shal defend but the wrong and y force, & demaunde iudgement if hee shall bee aunswered and shew his matter by & by how he is villaine & demaund iudgement if he shal be aunswered.

¶ Also sixe manner of men there be against whom if they sue actions &c. iudgement may bee aske if they shalbee aunswered. One is where the villaine sueth an action &c. against his lord, as in case aforesaide. The seconde is where a man outlawed vpon an action of Dette or trespas or vpon any other action or inditement, the tenant or the defendant may shewe al the matter of the record and the outlawry, & demaund iudgment if he shalbe aunswered because that hee is out of the lawe to sue any actiõ during the time that he is outlawed. The thirde is where an alien borne out of the allegeaunce of our souetaigne Lord the king, if such alien sue any action reall or

perſonal, ꝯ tenant or defendant may ſay that he was borne out of the kinges allegeance, & aſke iudgement if he ſhalbe aunſwered. The fowerth is, where a man by iudgement geuen againſt him vpon a writt of Premunire facias &c. is out of the kings protection, if he ſue any action, and the tenant or defendaunt ſhew all the record againſt him, he may aſke iudgemt if he ſhalbe aunſwered, for the law & ꝯ kinges writtes, bee the thinges by which a man is protected & holpē, & ſo during the time ꝯ a man in ſuch caſe is out of the kinges protection, he is out of helpe & protection by the kings lawe or by the kings writ.

¶ The fift is, where a man is entred and profeſſed into religion, if ſuch a perſon ſue an action, the tenant or defendant may ſhew that ſuch a one is entred into religion in ſuch a place into ꝯ order of Saint Benet, & is there a monke profeſſed, or in ꝯ order of friers mynours or preachers, and is there a frier profeſſed, and ſo of other orders of religion &c. & aſke iudgement if he ſhalbe aunſwered, & the cauſe is this, that when a man entreth into religion and is profeſſed, he is dead in ꝯ law, and his ſonne or next coſin incontinent ſhall inherite him aſwell as though hee were dead in deede, & when he entreth into religion, he may make his teſtament & his executours, & they may haue an action of debt due to him before his entre into religiō, or any other actiō that executours may haue if he were dead in deede,

in deede. And if he make none executors whē he entreth into religion, then ỹ ordinary may commit the administration of his goods to o= ther as if he were dead in deede. The sixt is where a man is accursed by the lawe of holy Church, and he sueth an action reall or perso= nal, the tenant or defendaunt may plede that he that sueth is accursed, & of this it behoueth him to shewe the Bishops letters vnder his seale, witnessing the accursing, & aske iudge= ment if he shalbe aūswered &c, but in this case if the demaundant or pleintife cannot deny it, the writ shall not abate, but the iudgement shalbe that the tenaunt or defendaunt shall go quite without day. for this, that when the de= maūdant or pleintife hath purchased his let= ters of absolution, & shewed them to the court he may haue a resummons or a reattachemēt vpon his originall after the nature of his writ &c. But in the other cases the writ shall abate &c. If the matter shewed may not bee gayne saide.

Also if a villein be made a seculer priest, yet his lorde may seise him as his villeine, & seise his goods &c. But it seemeth ỹ if the villeine enter into religion & is professed &c. ỹ the lord may not take him nor seise him for ỹ he is dead in ỹ law. And no more thē if a freeman take a niek to his wife ỹ lord may not take ne seise ỹ wife of the husband. But his remedy is to haue an action against the husband, for ỹ he tooke his nieke to wife without his will

and so may the Lorde haue an accion against the soueraigne of the house that taketh & admitteth his villaine to be possessed in ỹ same house without lycence and will of his Lorde &c. and shal recouer his dammages to the value of the villaine, for he ỹ is professed monke &c. shalbe a monke, and as a monke shalbe taken for terme of his life natural, except he be detayned by the lawe of holy church, and he is holden by his religion to keepe his cloister, and if the lord may take him out of the house, then he shoulde not liue as a dead person, nor after his religion, which shoulde be inconuenīēt &c. For if there be wardeine in chiualrye of body and lands of a child within age, if the child when he cōmeth to the age of xiiij. yeres enter into religion & is professed the wardein hath none other remedy as to ỹ warde of the bodie, but a writte of Rauishment of warde against the soueraigne of the house. And if any being of full age that is cosin & heire vnto the childe enter into the lande, the wardeyne hath no remedy as to the warde of the lande, because that the entre of the heire of the child is lawful in such case.

¶ Also in many diuers cases the lorde may make manumission and infraunchising to his villaine. Manumission is properly when the Lord maketh his deede to his villeine to enfraunchise him by this worde Manumitter, which is as much to say, as extra manū, & extra potestatē alterius ponere, as to put him out

of the

of the hands and the power of an other. And for this that by such a deede ỹ villeine is put out of the hand & power of his Lord, it is called manumission. And so euery maner of enfranchising made to a villeine, may bee sayde a manumission. Also if the lorde make to his villeine an obligation for a certein summe of money, or graunt vnto him by his deede an annuitie, or let him by his deede, landes or tenementes, for terme of yeares, the villayne is enfraunchised. Also if the lord make a feoffement to his villeyne of any landes or tenementes by deede or without deede in fee simple or fee taile, or for terme of yeres, and deliuereth vnto him the leisin, this is an enfrauchising, but if the Lorde make to him a lease of landes or tenements, to holde at the wil of the Lorde, by deede or without deede, this is no enfraunchising, for that he hath no maner of certeinty nor suertie of his estate, but ỹ the Lorde may put him out when he will. Also if a Lorde sue agaynst his villayne a Precipe quod reddat, if he recouer or be nonsuit after appearance, this is a manumission, for this ỹ he may lawfully enter into the land without such suit. In the same maner it is if he sue agaynst his villayne an accion of Dette, or of accompt, or of couenaunt, or of tresplas, or such other, this is an infraunchising &c. for this that he may enprison his villaine. & take his goods without such suit. But if the Lord sue his villeine by appeale of felony, this is

none enfraunchising to the villein though the matter of the appel is found against the Lord, because that the lord may not haue the villein hanged without such suit. But if the villein were not endited of the same felony before the appeale sued against him, & is acquited of the felony, so that he recouer dāmages against the Lord for the false appeale: Thē in this case the villein is enfraunchised because of the iudgement of dammages that was geuē to him against his lorde. And more cases and matters there be by ꝑ which a villein may be enfraunchised against his lord. Sed de illis quære. Also if a Lord of a mannour will prescribe that it hath beene accustomed within hys mannour, time out of minde that euery tenant within the same manour ꝑ marieth his daughter to any man wᵗout licence of ꝑ lord of the manour shal make fine to the Lord for the time being, this prescription is voyde, for none ought to make such fines but onely villaines, for euery free man may freely marie his daughter to whom it pleaseth him, and his daughter. And because that this prescriptiō is against reason such prescription is voyde. But in the shire of Kent of lands holden in gauelkinde where by the custome vsed time out of minde ꝑ children males ought euenly to enherite, this custome is allowable, for this ꝑ it is with some reasō, because that euery sonne is as great a gentleman as the elder sonne, and because of that more great honour and valure shall grow to

ꝑ by

if he had nothing by his auncestours, where peraduenture he might not so growe &c.

Also, where by custome called borough English, in some borough ỹ yongest sonne shall inherite al the tenements &c. This custome also standeth with reason, because that the yonger sonne if he lacke father & mother (because of his yong age) may least of all his brethren helpe himselfe &c. But if a mā will prescribe ỹ if any catteil were vpon ỹ demesnes of his maner there doing dāmage, ỹ the lord of the manor for ỹ time being hath vsed to distraine thē & the distres to retein till fine were made to him for the dāmages at his wil, this prescription is void, because it is against reasō ỹ if wrōg be done to a mā, ỹ he therof should be his owne iudge, for by such way if he had dāmages but to the value of an halfepeny, hee might assesse & haue therefore an C.li. which shoulde be against al reasō, & so such prescription or any other prescription vsed if it be against al reasō, this ought not nor wil not be allowed before Iudges. Quia malus vsus abolendus est.

¶ Rentes

THree manner of rentes there bee, that is to say, rent seruice, rent charge, & rent secke, rent seruice is, where a man holdeth his land of his lord by fealty and certeine rent, or by other seruice, and certeine rent.

¶ Or by homage, fealtye, and certeyne rent.

And if rēt seruice at any day that it ought to be payd be behind, the Lord may distreine for that of cōmon right. And if a man now will geue landes or tenementes to another in the taile, yelding to him certaine rent by yere, he of common right may distrein for the rent behinde, though that such gift was made without a deede, because that such rēt is rent seruice, but in such case where a man vpon such a gift or lease, wil reserue to him rent seruice, it behooueth that the reuersion of the landes and tenements be in the donour, or in the lessour, for if a man wil make a feffement in fee, or wil geue landes in the tayle, the remaynder ouer in fee simple without a deede, reseruing to him certaine rent, such reseruing is void, because ȳ no reuersion is in the donour, and such a tenant holdeth his lande immedyatly of the Lorde of whom his donour helde. And this is by force of ȳ statute of Westm. Cap. 1. Quia emptores terrarum. For before ȳ same estatute, if one made a feoffement in fee simple by deede or without deede, yelding to him and to his heires, certeine rent, this was rent seruice, and for this hee might distreyne of cōmon right. And if he made no reseruatiō of any rent, nor of any seruice, yet the feoffee helde of the feoffour by such seruyce as the feoffour held ouer of his lord next aboue. But if a mā by deed indēted at this day, make such a gift in the tayle, the remaynder ouer in fee, or feoffemēt in fee and by the same indea-

ture

ture reserueth to him and to his heires a cer=
teine rent, and that if the rent be behinde, ỳ
it shalbe lawful to hym & to his heires to dis=
treine &c. such rent is rēt charge, because such
lands and tenements be charged of such dis=
tresse by force of the writing onely, and not
of cōmō right. And if such a mā in such a dede
endented, reserue to him & to his heires cer=
tein rēt without any such clause set or put in
the deede, that he may distrayne &c. that such
rent is rent secke, because that he cannot dis=
trayne to haue the rent if it be denyed by the
same distresse, & if he were neuer seised in this
case of the rent, he is without remedy as shal
be saide hereafter. Also if a man seised of cer=
teine land graūt by his deede Polle, or by en=
denture, a yearely rent issuing out of the same
lande to an other in fee simple or in fee tayle,
or for terme of life &c. with clause of distresse,
&c. then that is rent charge, & if it be without
clause of distresse, then it is rent secke, and
note well, that rent secke Idem est quod red-
ditus siccus, because ỳ no distresse is incident
to it. Also if a man graunt by his deede rent
charge to another, & ỳ rent is behind, ỳ grau=
tee may choose if he wil sue a writ of Annuity
of it against the grauntour, or distraine for ỳ
rent behinde, and the distresse to withhold til
he bee of that payd: But he may not doe and
haue both together. for if hee take a writt of
Annuity, then ỳ land is discharged. And if he
sue not a writ of Annuity, but distrayne for ỳ
arrera=

arrerages, & the tenāt sueth a Replegiare &c, & the grauntee auoweth the taking of the distresse in the land &c. in court of record, then is the land charged, & the person of the graūtour discharged of an action of Annuitie.

¶ Also, if a mā will that another shall haue a rent charge issuyng out of hys landes, but he will not that his person shalbee charged in any manner by a writt of Annuitye, then he may haue such clause in the ende of his deede. Prouiso semper quod presens scriptū, nec aliquid in eo specificatum, non aliqualiter se extēdat ad onerandum personam meam per breue de annuali redditu. Sed tantummodo ad onerandum terram et tenementa præd, de annuali reddit præd. And then is the land charged, and the person of the grauntour discharged.

¶ Also, if a man make such a dede in such maner, ỹ if A of B. be not yerely paied at ỹ feast of Christmas for terme of life of xx. s. of lawful money, ỹ then it shalbe lawful to the sayd A. of B. to distrayne for it in the mannour of F. &c this is a good rent charge, because that the manour is charged of the rent by way of distresse. And yet the person himselfe ỹ made such a deede is discharged in this case of an action of annuitie, because that hee graunted not by his deede any annuitye to the sayde A. of B. but graunted onely that he may distrein for his annuitye.

¶ Also, if a man haue a rent charge to hym and to his heires issuing out of certeine land,

if hee

if hee purchase any parcel of the lande to him and to his heires, all the rent is extincte and annulled because that rent charge may not in such mānet be appoꝛcioned, but if a man that hath rent seruyce purchase parcel of the land whereof the rent is, thys shall not extinct all, but foꝛ the poꝛciō, foꝛ that rent seruice in such case may bee appoꝛcioned and shalbe appoꝛcioned after the value of the lande, but if a tenaunt holde his lande by seruice to yelde to his loꝛde yerely at such a feast an hoꝛse, oꝛ an hauke, oꝛ suche thinge semblable, if in suche case the loꝛde purchase parcel of the land, the seruice is gone, because that such seruyce may not bee seuered noꝛ appoꝛcioned, but if a man holde hys land of another by homage, fealty, and escuage, and by certeyne rent, if the Loꝛd purchase parcell of the lande ꝛc. In that the rent shalbe appoꝛcioned as is afoꝛesayde, but yet in this case the homage and fealty abideth whole to the Loꝛde, foꝛ the Loꝛde shall haue the homage and fealty of hys tenaunt foꝛ the remenant of landes and tenements holden of him as hee had befoꝛe ꝛc. foꝛ thys that suche seruyces be no annuell seruyces, and may not be appoꝛcioned. But ꝑ escuage may and shall be appoꝛcyoned after the quantitye and rate of the lande.

¶ Also if a man haue a rent charge, and hys father purchaseth parcell of ꝑ tenemēts charged in fee, and dyeth, and that parcell discendeth to his sonne ꝑ hath the rent charge, now this

this rent charge shalbe appoꝛcioned after the value of the lãd, as is afoꝛesaid of rẽt seruice, because that such a poꝛcion of the lande purchased by the father, commeth not to the sõne by his owne deede, but by discent and course of the lawe.

¶ Also if there be Loꝛd and tenant, and the tenant holdeth of his loꝛde by fealtie and certein rent, and the Loꝛd graunteth the rent by his deede to another &c. reseruing to him the fealtie, and the tenãt attourneth to ꝑ grauntee of the rent now such rent is rent secke to the grauntee foꝛ this that ꝑ tenements be not holden of the grauntee of the rent but be holden of the Loꝛd that receyueth to him fealty, And in ꝑ same maner it is where a man holdeth his land by homage, fealty, and certeine rent, if the loꝛd graunt the rent, sauing to him ꝑ homage, such rent after such graunt is rent secke, but where landes oꝛ tenementes bene holden by homage fealty, and certaine rent, if the Loꝛd will graunt the homage of his land by his deede to another, sauing to him the remenant of the seruices, and the tenant attourneth to him after the fourme of the graunte, now in this case the tenant holdeth his land of the graunt: and the loꝛde that graunth the homage, shall not haue but the rent as rent secke, and shall neuer distrayne foꝛ ꝑ rent foꝛ this, that neyther homage, noꝛ fealty, noꝛ escuage may be said secke, foꝛ he ꝑ hath oꝛ ought to haue of his tenaunt homage, oꝛ fealty, and

escuage

escuage, may of common right distrayne for it if it be behynde, for homage, fealty & escuage been seruices by which lands and tenements be holden and bene such that in maner may be taken but as seruices. But otherwise is of rent that was once rent seruice, for this that whē it is seuered &c. by the graunt of the lord frō the other seruices, it may not be saide rent seruice for this ȳ it hath not to it fealty which is incident to euery maner of rent seruice, & for this it is said rent secke.

¶ Also if a man let land to another for terme of life, reseruing to him certeine rent, if hee graunt the rent to another sauing to him the reuersion of the land so letten by his deede &c. such rent is but rent secke, for this that the grauntee hath nothing in the reuersion of the lād. But if he graūt the reuersion of the land to another for terme of life, and the tenant attourneth &c. then hath the grauntee the rent as rent seruice, because he hath the reuersion for terme of life. And so it is to be vnderstood that if a man geeue landes or tenementes in the tayle, reseruing to him and to his heires certain rent, or let lād for terme of life reseruing certayne rent, if he graunt the reuersion to another and the tenant attourneth all the rent and seruice passeth by the worde of the graunt of reuersion for this that all the rent and seruice in such case bee incidentes to the reuersion and passe by the graunt of reuersion. But though he graūt the rent to another

the

the reuersion passeth not by such graunt &c. And so note wel the diuersitie. And so it is holden Pasche 12. E. 4. But it is aiudged In xxbj.lib.All, where as the seruyces of the tenant in taile were graunted, that that was a good graunt, yet notwithstanding the reuersion remaines.

¶ Also if there be Lord, mesne, and tenant, and the tenaunt holdeth of the mesne by ỹ rẽt of fiue shillinges. and the mesne holdeth ouer by twelue pence, if the lord aboue purchase ỹ tenancy in fee, then the seruice of the mesnaltie is extinct, for this, that whẽ the lord aboue hath the tenauncy, hee holdeth of the Lorde next aboue hym. And if he ought to holde it of him that was mesne, then he shoulde holde one selfe tenauncye immedyatelye of dyuers Lordes which shoulde bee inconuenient. and the law will sooner suffer a mischiefe then an inconuenience. and for this the seigniourye of the mesnaltie is extinct. But in so much that the tenant held of the mesne by fiue shillings. and ỹ the mesne held but by xij.d. so that he had more auantage by iiij.s. then he payed to his Lorde, hee shall haue the sayd iiij.s. as a rent secke yerely of the Lorde that purchaseth the tenauncie.

¶ Also if a manne that hath rent secke is once seysed of any parcell of the rent, and after if the tenaunt will not paye the rent that is behynde, thys is hys remedye. It behoueth hym to goe by hymselfe, or by another,

to the

to the landes and tenementes, whereof the rent is issuing, and there to demaund the arrerages of the rent. And if the tenaunt deny to pay it, thys denying is a dysseisin of the rent. Also, if the tenaunt at the tyme bee not ready to pay it, this is a denying and a disseisin. Also, if the tenaunt, nor none other bee dwelling vpon the lands or tenementes whē he asketh the arrerages &c. this is a denying in law, and a disseisin in deede, and of such disseisins he may haue an action of Nouel disseisin agaynst the tenaunt, and recouer the seysin of the rent, and the arrerages, and hys dammages and costes of hys writ and of hys plee &c. And if after such recouerye the rent be another tyme denied him, thē he shall haue a redysseysin and recouer double dammages. And it is to bee had in minde, that this name Assise is Equiuocum. For sometyme it is taken for a Jurie, for in the beginning of the recorde of Assyse of Nouel disseisin, the record shall begynne thus. (Assisa venit recognit) which is to say, that iuratores veñ recogn and the cause is for this, that by the writ of Assise is commaunded to the sherife Quod faciat xij. liberos & legales homines de vicineto &c. videre tenementum illud, & nomina eorum imbreuiari, & quod summoñ eos per bonos summoñ quod sint coram Iusticiarijs &c. parati inde facere recognitionem &c. And for thys, that by force of such an original writ, a Pannell by force of ỹ same writ ought to bee returned &c. It is

sayd

ſayde in the beginning of the recorde in aſſiſe. Aſſiſa vent recogñ &c. Alſo in a writ of right it is commonly ſayd, that the tenant may put him in god & in the great aſſiſe &c. Alſo there is a writte in the Regiſter, called De magna aſſiſa eligenda, ſo is thys a good proofe that this name aſſiſe, ſometime is put for the Jurie and ſometime it is taken for al the writte of aſſiſe, and after that entent it is moſt properly and moſt commonly taken, as aſſiſe of Nouel diſſeiſin is taken for all the writ of aſſiſe of Nouel diſſeiſin. In the ſame maner aſſiſe of cõmon of paſture is taken for al ỹ writ of aſſiſe of cõmon of paſture & Aſſiſe of Mort. dauncester. and aſſiſe of Darreine preſentment &c. But it ſeemeth that the cauſe why ſuch writtes at the beginning were called aſſiſes, is for this, that by euery ſuch writ it is commaunded to the ſherife that he ſummõ xij. &c. which is as much to ſay that he ought to ſũmon a Jury &c. and ſometyme aſſyſe is taken for an ordinaunce. for to ſet certayne thyngs in a certeyne rule and diſpoſition as an ordynance that is entred in the auncient eſtatuts is called aſſiſa panis & ſeruicie. Alſo if there be lorde and tenaunt, and the Lorde graunteth the rent of his tenaunt by deede to another, ſauing to him the other ſeruices and the tenaunt attourneth that is a rent ſecke as it is aforeſayde. But if the rent be denyed hym at the next day of paymẽt he hath no remedy, for this ỹ hee had not thereof any poſſeſſion.

But

But if the tenant when hee attourneth to the grauntee, or after, will giue a penny or a halfe peny to ỹ graũtee in the name of seisin of rent, then if after at the next day of paiment ỹ rent be denied him, he shall haue an assise of Nouel disseisin, And so it is if a man graunt by his deed a yerely rent issuing out of his lande to an other &c. If the grauntour then after paye to the grauntee i. d. or an halfe penny in the name of seisin of the rent, thẽ if after the first day of payment the rent be denyed, the grauntee may haue an assise, or els not. Also of rẽt seck a mã may haue an assise of Mortdaunceſter, or a writ of Ayel or Cosinage, and all other maner of actions reals, as the case lyeth, as he may haue of any other rent.

¶ Also there be three causes of disseysin of rẽt service, that is to say, rescous, repleuin, & enclosure. Rescous, is when the lord distreineth in the land holden of him for his rent behinde, if the distresse be rescued frõ him, or the Lorde come vpon the land, and would distreine, and the tenaunt or an other man will not suffer him &c. Repleuin is when the lorde hath distrayned, and repleuin is made of the distresse by writ or by plaint &c. Enclosure is if the landes and tenements be so enclosed, that the Lord may not come within the lande and tenementes for to distraine, And the cause why such things so done be disseisins made to the Lorde, is for this, ỹ by such things the lorde is disturbed of the meane by which hee ought to

haue come to his rent. And fower cauſes be of diſſeiſin of rent charge, that is to ſay, reſcous, repleuin, encloſure, and denyer, for denying is a diſſeiſin of rent charge as it is aforeſaide of rent ſeck, And two cauſes be of deſſeiſin of rēt ſeck, that is to ſay, encloſure, and denyer, And yet it ſeemeth that there is an other cauſe of diſſeiſin of all the three rents aforeſaid, that is when the Lord is going to the lande holden of him for to diſtraine for the rent being behinde, the tenāt hearing this, encoūtreth him & foreſtalleth him the waie with force and armes & manaſſeth him in ſuch fourme that he dare not come to the land for to diſtraine for his rēt behind &c. for doubt of death, or bodily hurt, this is a diſſeiſin, for this that the lord is diſturbed of the meane whereby hee ought to come to his rent, and ſo it is if by ſuch forſtalling and manaſſing hee that hath rent charge or rent ſecke is forſtalled, or dare not come to the land to aſke the rent behinde.

¶ The third Booke.

¶ Parceners.

PArceners bee in two manners, that is to ſay, parceners after the courſe of the common lawe, and parceners after the cuſtome. Parceners after the courſe of the common lawe be, where a man or a woman is ſeiſed of certaine lande or tenements in fee ſimple or fee taile and hath none iſſue but daughters & dieth

and

and the tenements discend to the daughters & the daughters enter into the lands & tenemẽts so to them discended then they be called parceners & be but one heire to their auncester and they be called parceners for this, ꝑ by the writ that is called Breue de participatione facienda the lawe will constraine them that participation shall be made among them, and if there be two daughters to whom the lande discendeth then they be called two parceners, & if they be iii. daughters they be called three parceners, and fower daughters fower parceners, & so forth, and if a man seised of landes in fee simple or in fee taile die without issue of his bodie, and the tenements discende to his sisters they be parceners as is aforesaide. In the same manner it is where hee hath no sisters but ꝑ land discendeth to his auntes, they be parceners, but if a man haue but one daughter shee maye not bee saide parcener, but daughter and heire. And it is to weete, ꝑ partition betweene parceners may be made in diuers manners, one is when they agree to make partition and make partition of the tenements, as if there bee two parceners to deuide betweene thẽ the tenemẽts in two partes euery part by himselfe in seueralty of euen value, and if there be three parceners to deuide the tenementes in three partes in seueralty. In other ꝓticiõ there is to chose by agreement betwene them & certain of their friends to make the particiõ betwene thẽ of ꝑ lands and tenements in the fourme aforesaide:

And in ſuch caſes after ſuch particions the eldeſt daughter ſhall choſe firſt one of the partes ſo deuided, which ſhe will haue for her parte. And then the ſecond daughter after her an other part &c. if it ſo be that there be many ſiſters &c. If it be not that they be otherwiſe agreed betweene them, for it may be agreed betweene them that one of them ſhall haue ſuch tenementes and an other ſuch tenementes &c. without any ſuch firſt election and the parte that the elder ſiſter hath, is called in latine Enitia pars, But if the parceners agree that the elder ſiſter ſhall make partition of the tenementes in the fourme aforeſaide, and if ſhe do, then it is ſaide that the elder ſiſter ſhall chooſe the laſte parte after eche of her other ſiſters. Another partition and allotting there is, as if there be fower parceners, & after ſuch partition made of the landes euery parte of the landes is by it ſelfe written in a little ſcrowle, and it is couered all in waxe in a maner of a litle ball ſo that no man may ſee the ſcrowle, then are ỹ fower balles of waxe put in a Bonet to kepe in the handes of an indifferent man, and then the elder daughter firſt ſhall put her hande in ỹ bonet which ſhall take a ball of waxe and the ſcrowle within the ſame ball for her purparty and then the ſecond ſiſter ſhall put her hand in ỹ bonet & ſhall take another, & ſo thē the third ſiſter the third ball &c. and in this caſe it behoueth eche of them to hold them to their chance and allotment.

¶ Alſo

¶Also an other partition there is, as if there be fower parceners, and they will not agree ꝑ partition shall be made betweene them, then one of thē may haue a writ de Participatione faciendā against the other three sisters, or two may haue a writ of Participatione faciēda against the other, or the three against the fowerth at their election, and when iudgement shall be giuen vppon such a writ, the iudgement shall be such that partition shalbe made betweene ꝑ parties, and the sherife in his proper person shall goe to the landes and tenementes &c. and there he by the othe of xij. true men of his bailiwike &c. shall make partition betweene the parties, the one part of the same landes shall be alligned to the plaintife or to one of ꝑ plaintifes, & an other parte to an other &c. not making mention in the iudgement of the eldest sister more then of the yongest, & of the partition that he hath thus done, he shall make notice to the Iustices &c. vnder his seale and the seales of the xij. et. and so in this case may you see that the elder sister shall not haue the first election &c. but the sherife shall alligne the part that she shall haue &c. & it may be that ꝑ sherife will alligne the first part to the yonger sister, & the last part to the elder.

And note well partition by agreement betweene parceners may by the lawe be made amonge them as well by word without deede, as by deede.

¶Also, if two meeses discende to two par-

ceners and the one mese is worth by yeare xx. s. and the other but x. s. by yeare, in this case partition may be made betweene them in such fourme, ỳ the one parcener shall haue the one mese, and the other parcener shall haue the other mese, and she that shall haue the mese of xx. s. and her heires shall pay a yearely rent of v. s. issuing out of the same meale to the other parcener & to her heires for euer, because that euery of them shall haue euen in value, and such partition made, is good ynough and the same parcener that shall haue the rent of v. s. and her heires may distraine for the rent of common right in the same meale of the value of xx. s. if the rẽt of v. s. be behind at any time in whose hands soeuer the same meale commeth, though there was neuer seyzyng made of it betweene them. In the same maner it is of partition of al maner of landes and tenementes &c. where suche rent is reserued to one, or to diuers parceners vpon such partition &c. but such rent is not rent seruice, but rent charge, of common right had and reserued for egalty of the partition. And note wel that none be called parceners by the common lawe but women or the heires of women, and which come by landes and tenementes by discent, for if sisters purchase lands or tenementes of this they be called Ioynte nauntes and not parceners. Also if two parceners of lande in fee simple make partition betweene them &c. and the parte of the one

valueth

valueth muche moze then the part of the other if they were at the time of partition of ful age, that is to say, of xxi. yeres, thē they alway shal abide and neuer be defeated, but if ꝑ tenemēts whereof partition is made, be to them in fee taile, and the part that the one hath is muche better in yearely value then the parte of the o= ther, howbeit that they bee excluded duringe their liues to defeate the partition, yet if the parcener that hath ꝑ lesser part in value hath issue and dyeth, the issue may disagree to the partition, and enter, & occupy in common that other part ꝑ is allotted to her aunt, and so the aunt may enter and occupy in common the o= ther part allotted to her sister, as if no partici= on thereof had ben made &c.

¶ Also, if two parceners of tenementes in fee take husbandes, and they and their husbandes make partition betweēn them, if the part of the one be lesse in yearely value then the parte of ꝑ other, during the liues of the husbandes, the partition shalbe in his force and strength, yet after the death of the husbande the wife that hath the lesse part may enter in her sisters part as it is afore saide, and defete the partition, but if the partition so made betweene them were such, that euery part at the time of allotement were egal of yearely value, then it may not af= ter be defeated in such cases.

¶ Also, if there be two parceners & ꝑ yonger of them be within the age of xxi. yeares, and partition is made betweene them, so that the

part that is allotted to the younger, is lesse in value then the part of the other. In this case the yonger during the time of her nonage, and also when she cõmeth to full age of xxi. yeares, may enter in the porcion to her sister allotted, &c. and defeate the partition, but such a parcener ought to take hæde when shee commeth to full age, that she ne take to her owne vse, all ỹ profites of the tenemẽts to her allotted, for by that she agræeth to the partition at such age, in which case the partition shall stande and abide in his force and strength &c. but peraduẽture the profites of the halfe she may take, leauing the profits of the other halfe, to her sister &c. It is to wæte, that when it is saide males and females be of full age, that shall be vnderstanded of the age of xxi. yeres: for if any feffement or grant, release, confirmation, obligation, or any other writinge before anie suche age be made by anye of them &c. or that any within such age bee baylife or receiuer with any man &c. all serueth for nought and maye bee auoyded. Also a man before such age shall not be sworne in no iurie nor no inquisition. Also if tenementes bee giuen to a man in the tayle which hath as much lande in fee simple, and hath issue two daughters & dyeth, and the daughters make partition betwæne them, so that the landes in fee simple be allotted to ỹ younger daughter in allowance of the tenementes tayled, allotted to the elder daughter, if after such partition the yonger daughter alieneth

eneth the land in fee ſimple to an other in fee,
d hath iſſue a ſonne or a daughter and dieth,
e iſſue may enter in the tenementes tayled, &
em holde in purpartie with their Aunt, and
is is for two cauſes, one is for that, that the
ue may haue no remedie of the lande alienéd
his mother, for that the lande was to her
fee ſimple, and in ſo much as he is one of the
ires in the taile, & hath nothing recompen=
d of that, that to him belongeth of the tene=
ets tayled, it is reaſon that he haue his pur=
rtie of the lande in tayle, and namely when
ch partition maketh no diſcōtinuance of the
ile, as ſhalbe ſaid hereafter in the chapter of
iſcontinuance. But the contrary is holden
9.10.H.6. that is to ſaye, that they may not
ter vpon the parcener ỹ hath the lande tay=
d, but is put to his ſuit by writ of Formedō
n other cauſe is, for that, ỹ it ſhall be coun=
d the folly of the elder ſiſter, that ſhe would
ree to the partition where ſhe might haue
d halfe the land in fee ſimple, and halfe of the
nementes in the taile for purpartie, and ſo
be ſure without dammage &c. Alſo if a man
yled in a plough lande by iuſt title, diſſey=
th an infant within age of another plough
nde, and hath iſſue two daughters, and dy=
h ſeyſed of both thoſe plough landes, the en=
nt then being within age, and the daughters
nter & make partition, & the one plough land
allotted for ỹ purparty of the one, as percaſe
the yonger ſiſter in allowance of the other

plough

plough lande which is allotted to the purpartie of the other, so that after the infant entreth in the plough lande of the which hee was dilleyſed vppon the poſſeſſion of the parcener that hath the ſame ploughe lande, then the ſame parcener may enter into ꝑ other ploughe lande that the ſiſter hath, and holdeth in parcenary with her, but if the yonger ſiſter alien the ſame plough lande to an other in fee ſimple before the entre of the enfant, and after the childe entreth vpon the poſſeſſion of the alienee, then ſhee may not enter into the other ploughe lande, for this that by her alienation ſhee hath vtterlye diſmiſſed her ſelfe to haue any parte of the tenementes as parcener, but if the yonger ſiſter before the entre of the enfaunt make thereof a leaſe for terme of yeares, or for terme of life, or in fee taile, ſauing the reuerſion to her, and after the childe entreth, there perauẽture it is otherwiſe, for this that ſhe diſmiſſeth not her ſelfe of all that, ꝑ was in her, but hath reſerued to her the reuerſion and the fee ſimple &c.

¶ Alſo, if there be three or fower parceners that make partition betweene them, if the part of the one parcener be defeated by ſuch lawfull entry, ſhe may enter and occupy ꝑ other landes of all the other parceners, and compell them to make newe partition of the other landes betweene them &c.

¶ Alſo, if there be two parceners, and the one taketh an huſbande, and the huſband and

the

the wife haue issue betweene them, & the wife dieth, and the husbande holdeth him in ẏ halfe as tenaunt by the curtesie, In this case ẏ parcener ẏ suruiueth, & the tenant by the curtesie may well make partition betweẽ thẽ &c. And if the tenãt by curtesie will not agree to make partition, then the parcener ẏ suruiueth maye haue a writ de participatione facienda &c. & cõpel him to make partition. But if the tenãt by the curtesie wil haue partition betweene thẽ, & the parcener ẏ suruiueth will not haue it, then the tenant by ẏ curtesie shal haue no remedy for to haue partition, for he may not haue a writte de participatione facienda, for this ẏ he is not parcener, for such a writ lyeth for parceners all only. And so may ye see ẏ the writ de participatione facienda lyeth against tenãts by the curtesie, and yet him selfe may not haue such a writ.

¶ Parceners by the custome.

PArceners by the custome bee where a man seised in fee tayle of the landes or tenements that be of the tenure called Gauelkinde with in ẏ shire of Kent, & hath issue diuers sonnes and dyeth, such landes and tenementes shall discende to all the sonnes by the custome, and they euenly shall enherite and make partition betweene them by the custome as females doe, and a writ de participatione facienda lyeth in this case as betweene females, but it

it behoueth in the declaration to make mentiō of the custome. Also such custome is in other places in England, and also such custome is in North wales.

¶ Also there is an other partition that is of an other nature, and in an other fourme then any of the particions aforesaide, as a man seised of certaine landes in fee simple hath issue two daughters, and the elder is married, and the father giueth parcell of the same landes to the husbande with his daughter in franke marriage, and dyeth seysed of the remnaunt the which remenaunt is of more greater value by yeare then be the lands giuen in franke mariage.

¶ In this case the husbande and the wife shall haue nothing for their part of the sayde remenaunt, but if they will put in their landes giuen in franke mariage in hotchpot with the remenaunt of the lande with her sister, and if they will not do so, then the yonger sister may occupie the same remenaunt, and take to her the profites onely, and it seemeth that this worde hotchpot is in English a pudding, for in such a pudding is commonly put not one onely thinge, but one thing with an other, and for this it behoueth in such case to put the landes giuen in franke marriage with the other landes in hotchpot if the husbande and the wife will haue any thinge in the other remenāt &c. This word hotchpot is but a terme of similitude, & is as much to say as to put the

landes

landes giuen in franke marriage & other lands in fee simple &c. together, & this is to such entent to accompt the value of all the lands, that is to say, of ỹ lands giuen in franke marriage & the remnant that was not giuen, and thẽ parti-tion shall be made in this fourme that ensueth. As put case that a man seised of xxx. acres of lande in fee simple euery acre in value xij.d. by the yeare which hath issue two daughters, and the one is couert baron, & the father giueth x. acres of the xxx. acres to the husband with his daughter in franke mariage & dyeth seysed of the remnant, then the other sister shall enter in the remnant, that is to say, in the xx. acres, and shall occupy it to her owne vse, except the husband and the wife will put their x. acres giuen to them in franke marriage with the other xx. acres in hotchpot, that is to saye, together, and then when the value is knowne of euery acre, that is to say, euerie acre is yearely worth xij.d. then the partition shall be made in such forme, that is to say, that the husbande and the wife shall haue aboue the x. acres giuen to them in franke marriage v. acres in seueraltie of the xx. acres, and the other sister shall haue the remnaunt, that is xv. acres of the xx. acres for her part, so that accompting the x. acres that the husbande and the wife had in franke marriage, and the other v. acres of the xx. acres, the husbād & the wife haue as much in yearely value as ỹ other sister hath, & so alway vpõ such partition the lands

giuen

giuen in franke marriage abide to the donors or to the heires &c. after ỹ forme of the gift &c. for if ỹ other parcener should haue nothing of this ỹ is giuen in frākemariage, of this should follow an incōuenience & a thing against reason which the law will not suffer &c. and the cause why that lands giuen in franke mariage shalbe put in hotchpot is this, that whē a mā giueth landes and tenements in franke marriage with his daughter or with his other cosin, it is to be vnderstood by the law that such gift made by such wordes franke mariage, is an aduancement of his daughter or of his cosin, & namely when the donour and his heires shall not haue any rent or seruice of him except fealtie vntil the foweth degree be passed &c. and for such cause the law is that she shall haue nothinge of the other landes and tenementes discended to the other parceners &c. but if she will put the tenemēts giuen in frank mariage in hotchpot as is aforesaid, and if she will not put the lands giuen in frankmariage in hotchpot, then she shall haue nothing in the remenāt, for this that it shalbe vnderstode by the lawe that she is sufficiently aduaunced to which aduauncement she agreeth and holdeth her content, and the same law is in this matter betweene the doneēs in franke marriage & the other parceners as to put in hotchpot &c. the same lawe is betweene the heires of the doneēs in franke marriage and the parceners &c. if the doneēs in franke marriage dye before their

their aunceſters, or before ſuch partition &c. as to put in hotchpot &c. And note well that gift in franke mariage was by the cõmon law before the ſtatute of Weſtminſter the ſeconde, and alway after ſo hath beene vſed and continued &c.

¶ Alſo ſuch putting in hotchpot &c. is where landes or tenements that were giuen in frank marriage diſcend frõ the donour in franke mariage al onely, for if the landes diſcende to the daughters by ẏ father of the donour, or by the mother of the donour, or by ẏ brother of ẏ donour or other aunceſters, & not by the donour &c. there it is otherwiſe, for in ſuch caſe ſhe to whome ſuch gifte in franke mariage is made, ſhall haue her part as if no ſuch gift in franke marriage had bene made, for this that ſhe was not aduaunced by him &c. but by an other.

¶ Alſo, if a man ſeiſed in xxx. acres of lande euery acre of euen yearely value, hauing iſſue two daughters as it is afore ſaide, and giueth of this to the huſbande of the daughter xb. acres in franke mariage, and dyeth ſeiſed in the other xb. acres, in this caſe that other ſiſter ſhall haue the xb. acres ſo diſcended to her only, and the huſband and the wife ſhall not put in ſuch caſe the xb. acres to him giuen in frank mariage in hotchpot &c. for this that the tenements giuen to him in franke marriage be of as good yearely value as the other landes diſcended &c.

¶ For

¶ For if the landes giuen in franke marriage were of as euen value as the remnaunt, or of more value, then in vaine and to none entent such landes giuen in franke marriage shall bee put in hotchpot &c. for this that she may haue nothing of the other landes descended &c. For if she should haue any parcel of the other lands discended, then should she haue more in yearely value, then her sister &c. which the lawe will not &c. And as it is said in the cases aforesaid, of two daughters or two parceners, in ỹ same manner, and in like cases is, where there bee mo sisters, after that as the case and the matter is &c. And it is to witte, that landes and tenements giuen in franke marriage, shall not be put in hotchpot, but with the lands discended in fee simple, for of landes discended in fee tayle, partition shall be made as if no such gift in franke marriage had bin made. Also no lāds shalbe put in hotchpot with other, but landes that be giuen in franke marriage al only. For if any womā haue any other lāds or tenemēts by any other gifte in the tayle, shee shall neuer put such land so giuen in hotchpot &c. but she shall haue the part of the remnaunt, discended &c. that is as much as the other parcener shall haue of the same remnant.

¶ Also another partition may bee made betweene parceners, that varieth from the partitions aforesaide, as if there be three parceners, and the yongest would haue partition, and the other two would not, but will holde in parcena-

cenarie that, that to them belongeth without partition: In this case if one part be allotted in seueraltie to the yonger sister after that that shee ought to haue: then the other may holde the remnant in parcenary & occupie in common without partition if they wil, & such partition is good ynough. And if after the elder & middle parcener wil make partition betwene them of that that they held, they may well do so when they please. But where partition shalbe made by force of a writ de Participatione facienda &c. there otherwise it is, for there it behoueth that euery parcener haue his part in seueraltie &c. More shalbe said of Parceners in the Chapiter of Iointenants, and also in the Chapiter of Tenants in common.

¶ Iointenants.

IOintenants bee as a man seised of certaine lands or tenements &c. and thereof hath enfeoffed two, or three, or fower, or more, to haue and to hold to them and to their heires, or to haue and to holde to them for terme of their lyues, or for terme of an others life, by force of which feoffement they be seised, such be Iointenants.

¶ Also if two or three disseise another of any landes or tenements to their owne vse, then the disseisours be Iointenants: But if they disseise an other to the vse of one of them, then be they no Iointenants, but he to whom the

vse of the disseisin is made, is sole tenant, & the other haue nothing in the tenancy, but be called coadiutors to the disseisin &c.

¶ And note well, that disseisin is properly where a man entreth into any landes or tenements where his entre is not lawful, & putteth him out that hath the franktenement &c. And it is to wit, that the nature of iointenancy is, that he that suruiueth shal haue only ỹ whole tenancy after such estate as he hath if the ioynture be continued &c. As if iij. iointenants be in fee simple, & the one hath issue & dyeth, yet they that suruiue shal haue the tenements whole, & the issu shal haue nothing, & if the second iointenant haue issue & die, yet the third that suruiueth shal haue the tenements whole, & shall haue them in fee simple to him & to his heires. But otherwise it is of parceners, for if iij. parceners be, & before any partition, the one hath issue and dyeth, that that to her belongeth shal discend to her issu, & if such a parcener die without issue, then that that to her belongeth shall discēd to her heires, so that they shal haue this by discent, and not by the suruiuor as Iointenants haue &c. And as the suruiuor holdeth place among iointenants &c. in the same maner it holdeth place among them that haue ioint estate or possession with others of chattels real, or chattels personel. As if a leas of lands or tenements bee made to many for terme of yeares, he that suruiueth of the lessees shal haue ỹ tenements whole to him during the terme by force

of

of the same lease. And if any horse, or other chattel personal be giuen to many mo, hee that suruiueth shall haue them to him selfe.

¶ In the same maner it is of dets and duities &c. For if an Obligation be made to many for one duity, he ꝑ suruiueth shal haue al the debt, & so it is of all other couenants & contractes.

¶ Also some Iointenantes may be that may haue ioint estates, and bee iointenantes for terme of their liues, and yet they haue seueral inheritances. As if landes bee gyuen to two men, and to the heires of their two bodies ingendred: In this case the donees haue ioint estate for terme of their two lyues, and they haue seueral inheritance. For if the one of the donees haue issue and die, the other that suruiueth shall haue all by the suruyuour for terme of his life. And if he that suruiueth hath also issue, and die, then the issue of the one shall haue the halfe of the land, and the issue of the other shall haue the other halfe of the lande, and they shall holde the lande betwene them in common, and bee not Iointenants, but tenants in common. And the cause that such donees in such cases haue ioynt estate for terme of their liues, is this, for this that at the beginninge landes were gyuen to them two, which wordes without more saying, made a ioint estate to them for terme of their lyues. For if a man will let land to an other by deede, or without deede, not making mention what estate hee hath, and of this maketh

liuerie of seisin: In this case the lesse shall haue estate for terme of his lyfe, and so in so much that the lands were giuen to them, they haue a ioint estate for terme of their liues. And the cause why they haue seueral inheritance is this, in somuch that they cannot by possibilitie haue an heire betwene them ingendred as a man and a woman may haue &c. then the law wil that their estate and their inheritance shal be such, as reason wil after the forme and effect of the wordes of the gift, and that is to the heires that the one ingendreth of his bodie by any of his wiues, and the heires that the other ingendreth of his bodie by any of his wyues &c. So it behoueth by necessitie of reason, that they shall haue seueral inheritance. And in such case, if the issue of one of the donees after the death of the donees die, so that he hath no issue alyue of his bodie ingendred, then the donour or his heires may enter in the halfe as in his reuersion, though the other of the donees hath issue aliue &c. And the cause is, for so much as the inheritance is seuered &c. the reuersion in the law is seuered &c. and the suruiuour of the issues of the other shall holde no place to haue the whole. And so as it is said of males, in the same maner it is where land is gyuen to two females, & to the heires of their two bodies begotten.

¶ Also if landes bee gyuen to two females, and to the heires of one of them, this is a good ioynture, and the one hath a freehold, and the other

other hath fee simple, & if she y hath the fee die, she that hath the freehold shal haue the whole by the suruiuor for terme of life. In the same maner it is where tenemẽts be giuen to two, & to the heires of the body of one of them engendred, the one hath freehold, & the other fee taile. Also if two iointenants be seised of estate of fee simple, and the one granteth a rent charge by his deede to another out of that that to him belongeth &c. In this case during the life of the grantor, the rent charge is effectual. But after his decease the rent charge is voide as to charge the land, for he that hath the land by the suruiuour, shal hold al the land discharged. And y cause is for this, that he that suruiueth claimeth to haue the land by the suruiuour &c. and not by discent of his fellowe &c. But otherwise it is of Parceners, for if there be two parceners of tenementes in fee simple, & before any partition the one chargeth that that to him belongeth by his deede, of a rent charge &c. & dyeth without issue, & that that to him belongeth, discendeth to the other parcener, In this case the other parcener shal hold the land charged &c. for this that he commeth to the halfe by discent as heire &c.

¶ Also if there bee two Iointenantes in fee simple within one borough where the landes and tenements within the same borough bee deuisable by testament, if the one of the sayde iointenaunts deuyse that that to him belongeth by testament &c. and dye, this deuise is

voide. And the cause is for this, that no deuise may take effect but after the death of the deuisour. And for this that by his death al the lād incontinent commeth by the law to his felow that suruiueth, by the suruiuour, which neyther claymeth nor hath nothing in the land by the deuise, but in his owne right by the suruiuour after the course of the law &c. for this cause such deuise is void.

¶ But otherwise it is of Parceners seised of tenements deuisable in such case of deuise &c. Causa qua supra.

¶ Also it is commonly said, that euery iointenant is seised of the land ỹ he holdeth iointly &c. throughout & by al. And this is as much to say, that he is seised by euery parcel & by all &c. and this is true, for in euery parcell, and by eche parcel, & by al the lands & tenementes he is iointly seised with his fellowes &c.

¶ And if two iointenants be seised of certein landes in fee simple, and the one letteth that, that to him belongeth to a straunger for terme of xl. yeeres and dyeth within the terme. In this case after his decease the lessee may enter and occupie the halfe to him letten during the terme &c. though the lessee neuer had possession of it in the life of the lessor, by force of the lease &c. And the diuersitie betweene the case of the graunt of a rent charge & this case is this, for in the graunt of a rent charge by a toyntenant the tenants abyde alway as they were before without that, that any hath any right to haue

parcel

parcel of the tenements but him selfe, & the tenements abyde in such plite as they were before the charge &c. But where a lease is made by a ioyntenant to another for terme of yeres, &c. incontinent by force of the lease the lessee hath right in the same land, that is to say, of al that, ỹ to his lessour belonged, & to haut that by force of the same lease during his terme &c. and this is the diuersity &c.

¶ Also iointenãts if they wil, may make partition betweene them, and the partition is good ynough, but they shal not be compelled by the law to do it, but if they will make partition of their proper will and agreement, the partition shal stand in his strength. P. 3. E. 4.

¶ Also, if a toint estate bee made of lande to the husband and the wife, and to a third person, in this case the husbande & the wife haue not in the law in their right but the halfe &c. And the third person shal haue as much as the husband and the wife haue, that is to say, the other halfe &c. And the cause is, for that the husband and the wife be but one person in the law, & be in like case as if the estate be made to two iointenants, where ech one hath by force of the iointure the one halfe, & the other the other halfe. In the same maner it is, where an estate is made to the husbande & the wife, & to other two men, in this case the husband & the wife haue not but the third part, & the other two men the other two partes &c. Causa qua supra. More shall bee sayde of them touching

iointenācy in the chapter of Tenāts in cōmon Tenant per Elegit, & tenāt by estatute marchāt,

¶ Tenants in common.

TEnauntes in common bee they, that haue lands and tenements in fee simple, fee taile, or for terme of lyfe &c. Which haue such lands and tenements by seuerall title, and not ioint title, and none of them knoweth that, that is seueral to him. But they ought by the law to occupie such landes and tenementes in common, and vndeuyded to take the profites in common. And because that they come to such landes and tenementes by seueral titles, and not by one selfe ioint title, and their occupation & possession shal be by the law among them in common, therfore they be called tenaunts in common. As if a man infeoffe two Iointenants in fee, & one of them alyeneth that that to him belongeth to another in fee, nowe the other iointenant and the alyenee be tenantes in common, for this that they be seysed in such tenementes by seuerall titles, for the alyenee commeth vnto the halfe by the feoffement of thone iointenaunt, and the other iointenaunt hath the other halfe by force of the first feoffement made to him and to his first fellowe, and so they bee in by seuerall titles, and by seuerall feoffements &c. And it is to witte, that when it is saide in any booke, that a man is seised in fee, without more saying it shalbe vnder-

vnderstode fee simple, for it shall not bee vnderstood by such word in fee, that a man is seised in fee taile, except that there be put thereto such addition, that is to say fee taile.

¶ Also if three iointenants bee, and the one of them alyeneth that, that to him belongeth to another in fee. In this case the alyenee is tenant in common with the other two iointenants. But yet the other two iointenantes be seised of the two partes iointly, & of those two partes the suruiuour betweene them holdeth place &c.

¶ Also if there be two iointenaunts in fee, and the one geueth that, that vnto him belongeth to another in the taile, the donee and the other iointenants be tenaunts in common &c. But if the landes be geuen to two men & to the heires of their two bodies engendred, the donees haue ioint estate for terme of their liues, and if eche of them haue issue and dye, their issues shall holde in common &c. But if landes bee geuen to two Abbotts, as to the Abbot of Westminster, and to the Abbot of S. Albons, to haue and to holde to them and to their successors, in this case they haue incontinent at the beginning estate in common and not ioint estate. And the cause is for this that euery Abbot or other Soueraigne of an house of Religion before that he be made Abbot or soueraigne, was but a dead man in the law. And when he is made Abbot, he is as a man personable in the lawe, al onely to purchase

chase, and to haue landes and tenementes and other thinges to the vse of his house, and not to his owne proper vse, as other seculer men may. And for this in the beginning of their purchase, they be tenants in common. And if the one of them dye, the Abbot that suruyueth shall not haue all by the suruyuour, but the successor of the Abbot that dyeth shal hold the halfe in common with the Abbot that suruyueth &c.

¶ Also if landes be geeuen to an Abbot & to a seculer man, to haue & to hold to them, that is to say, to the abbot & his successors, & to the seculer man, to him & to his heires, they haue estate in common, Causa qua supra.

¶ Also if lands be giuen to two men, to haue & to hold the one halfe to the one & to his heires & the other halfe to the other & to his heires, they be tenants in common &c.

¶ Also, if a man seysed of certeine landes infeoffeth another in the halfe of the same lande without any speech of assignement or lymitation of the same halfe in seueraltie at the time of the feffement, then the feffee & the feffor shal hold the parts of the land in common. And in the same maner as is aforesaid of tenantes in common of lands or tenements in fee simple or in fee taile, in the same maner may it be said of tenāts for terme of life. As if two iointenāts be in fee, & the one letteth to a man that, that vnto him belongeth for terme of life, and the other iointenant letteth that, that to him belongeth

longeth to another for terme of life, these two lessees be tenants in common for terme of their lyues &c.

¶ Also if a man let lands to ij. men for terme of their liues, and the one graunteth al his estate of that, that vnto him belongeth to an other &c. then the other tenant for terme of life, & he to whom the graunt is made be tenãts in cõmon during the time þ both lessees be aliue.

¶ And it is to be remembred, that in al other such cases, though that they bee not heere expressely named or specified, if they bee in like reason, then be in like law.

¶ Also if there be two iointenaunts in fee, & the one letteth that, that vnto him belõgeth to another for terme of life, the tenãt for terme of life, during his life, & the other ioyntenaunt that did not let, be tenãts in cõmon. And vpon this case a question may rise as this. Put the case that the lessour hath issue & dyeth, lyuing the other iointenant his fellow, & lyuing the tenãt for terme of life, þ question may be such, if the reuersion of the halfe &c. þ the lessor hath shal discẽd to þ issue of the lessour, or þ þ other iointenãt shal haue it by þ suruiuor. And some haue said in this case, that the other iointenãt shal haue the reuersion by the suruiuor, & their reason is such, when þ iointenãts were iointly seysed in fee simple &c. though the one of thẽ made estate of that, þ vnto him belongeth for terme of life, & though that he hath seuered the frankstenement of that, that to him belongeth by

by the leaſe, yet hæ hath not ſeuered the fæ ſimple, but the fæ ſimple abydeth to him iointly as it was before. And ſo it ſæmeth vnto thē that the other iointenant that ſuruiueth, ſhall haue the reuerſion by the ſuruyuour &c. And other haue ſaid the contrarie, and this is their reaſon, when one of the iointenaunts letteth this that to him belōgeth to another for terme of his life, that by ſuch leaſe the franktenement is ſeuered from the iointure. And by the ſame reaſon the reuerſion that is dependaunt vnto the ſame franktenement, is ſeuered from the ioynture. Alſo if the leſſour had reſerued to him a yerely rent vpon the leaſe, the leſſour onely ſhoulde haue had the rent &c. The which is a prœfe that the reuerſion is onely in him, and that the other hath nothing in the reuerſion &c. Alſo if the tenaunt for terme of life were impleaded &c. and made default after default, then the leſſour ſhalbæ onely of this receiued to defende his right, and his felloẅe in this caſe in no manner ſhall bæ receiued: which prœueth that the reuerſion of the halfe is onely in the leſſour. And ſo by conſequens, if the leſſour dye ſyuing the leſſæ for terme of life, the reuerſion ſhall diſcende to the heires of the leſſour &c. and not come to the other ioyntenaunt by the ſuruyuour, Ideo Quære. But in this caſe if the iointenāt that hath the franktenement haue iſſue and dye, ſyuing the leſſour & the leſſæ, then it ſæmeth that the iſſue ſhall haue the halfe in his demeſne as of

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fee by discent, for this that the franktenement may not by nature of the ioynture be annexed to a reuersion &c. And it is certain, that he that letteth was seised of the halfe in his demesne as of fee, and none shal haue any iointure in his franktenement, Ergo this shall discend to hys issue, Sed Quære. But if it be thus, that the law in this case is such, that if the lessor die iyuing the lessee, and iyuing the other iointenant that hath the franktenement of the other halfe, that the reuersion shall discende to the issue of the lessor, then is the iointure and the title that any of them may haue by the suruiuor by the right of the ioynture, annulled and al vtterly defeated for euer.

¶ In the same manner it is if the iointenant that hath the franktenement die, iyuing the lessor and the lessee, if the law be such that hys franktenement and fee that he hath in the halfe shal discend to his issue, then the iointure shal be defeated for euer &c.

¶ Also if three iointenants be, and the one releaseth by his deede to one of his fellowes all the right that he hath in the land, then hath he to whom the release is made, the third part of the lands by force of the release, and he and his fellow shal hold the other ij. parts iointly. And as to the third part that he hath by force of the release, he holdeth the third part with him selfe and his fellow in common.

¶ And it is to wit, that sometime a deede of release shall take effect and shalbee in vre to

put

put the eſtate of him that made the releaſe, to him to whom the releas is made, as in the caſe aforeſaid.

¶ And alſo if a ioint eſtate bee made to the huſband and his wife, and to a third perſon, and the third perſon releaſeth his right that he hath &c. to the huſband, then hath the huſband the halfe that the third perſon had, and the wife of this hath nothing. And if in ſuch caſe the third releaſe &c. to the wife, not naming the huſband in the releaſe, then hath the wife the halfe that the third perſon had: And the huſband hath nothing of this, but in right of his wife, for this that in ſuch caſe the releas ſhal enure to put the eſtate to him to whom the releas is made of all that, that belongeth to him that made the releaſe. And in ſome caſe a releaſe ſhal enure to put all the right that hee hath that made the releaſe, to him to whom the releaſe is made. As a man ſeiſed of certaine landes and tenementes, is diſſeiſed by two diſſeiſors, if the diſſeiſee by his deede releaſe all his right &c. to one of the diſſeiſours, then hee to whom the releaſe is made, ſhall haue and holde all the tenementes to hym onely, and put his fellow out of euery occupation of it: And the cauſe is, for this that the two diſſeiſours were ſeyſed in the tenementes by wrong by them done againſt the law. And when one of them hath the releaſe of him that had right to enter &c. this right in ſuch caſe reſteth in hym to whom the releaſe

releaſe is made, and in ſuch plight as if he that had the right had entred and infeoffed him &c. And the cauſe is for this, that he that before had an eſtate by wrong, that is to ſay, by diſſeiſin, now by the releaſe hath a ryghtfull eſtate.

¶ And in ſome caſe a releaſe ſhall enure by way of extinguiſhment, & in ſuch caſe ſuch releaſe ſhal helpe the tointenant to whom the releaſe is not made, aſwel as him to whom the releaſe the made. As if a man be diſſeiſed, and the diſſeiſor maketh a feoffement to two men in fee, if the diſſeiſee releaſe to one of the feoffees in fee by his deede, then ſuch releaſe ſhal enure to both the feoffees, for this that the feoffees haue eſtate by the law, that is to ſay, by ꝑ feffement & not by the wrong done to any other.

¶ And in the ſame maner it is, if the diſſeiſor make a leaſe to a man for terme of lyfe, the remainder ouer to an other in fee, if the diſſeiſee releaſe to the tenants for terme of lyfe all hys right &c. this releaſe enureth aſwell to him in the remainder, as to the tenant for terme of life &c. And the cauſe is for this, the tenāt for term of life commeth to his eſtate by the courſe of the law. And for this the releaſe ſhall enure & take effect by way of extinguyſhment of the right of him that hath releaſed &c. And by this releaſe the tenant for term of life hath no greater eſtate then hee had before the releaſe made vntohim, and the right of him that releaſed is all vtterly extinct. And in ſo much that ſuch releaſe

releaſe cannot enlarge the eſtate of the tenant for terme of life, it is reaſon that the releaſe ſhall enure to him in the remainder &c. Whore ſhalbe ſaid of Releaſes in the chapiter of Releaſes.

¶ Alſo if there be two parceners, and the one alieneth that that vnto hym belongeth to an other, then the other parcener and the alienee be tenants in common.

¶ Alſo tenants in common may be by title of preſcription, if the one and his aunceſtors, or they whoſe eſtate he hath in the halfe, haue holden in common, the ſame halfe with the other tenant that hath the other halfe, and with his aunceſtors, or them whoſe eſtate hee hath as vndeuided, from time whereof no memorie runneth. And diuers other matters may make and cauſe men to be tenants in common that be not here expreſſed.

¶ Alſo in ſome caſe tenants in common ought to haue of their poſſeſſion ſeueral actions, and in ſome caſes they ſhal ioine in one action. For if there be two tenants in common, and they be diſſeiſed, they ought to haue againſt the diſſeiſor ij. Aſſiſes, and not one Aſſiſe, for euery of them ought to haue an aſſiſe of his halfe &c. and the cauſe is for this, that tenants in common were ſeiſed by ſeuerall titles: but otherwiſe it is of Iointenants. For if there be xx. Iointenants, and they be diſſeiſed, they ſhall haue in all their names but one Aſſiſe, becauſe that they had but one ioint title.

¶ Alſo

Also if there bee three Iointenantes, and one releaseth to one of his fellowes all the right that he hath, and after the other two be disseysed of the whole &c. in this case the other shall haue seueral Assises in this forme, that is to say, they shal haue in both their names one Assise of the two partes &c. for this that they helde the two partes ioyntly at the time of the disseysin: And as to the third part, hee to whom the release was made, ought to haue thereof an Assise in his owne name, for thys that as to the third part hee is tenant in common &c. for this that he came to the third part by force of the release, and not onely by force of the iointure.

¶ Also, as to sue actions that touch the realtie, there is diuersitie betwene parceners that bee in by diuers discents, and tenants in common. For if a man seised of certaine landes in fee haue issue two daughters, and die, and they enter &c. and ech of them hath issue a sonne and dyeth without partition made betwene them, by which the one halfe discendeth to the sonne of the one parcener, and the other halfe discendeth to the sonne of the other parcener, and they enter and occupie in common and bee disseised, in this case they shall haue in their two names one Assise, and not two Assises. And the cause is, that though they come in by diuers discents &c. yet they be parceners, and a writ de Particione facienda lieth betwen them. And they bee not parceners hauyng regarde

or respect onely to the seisin and possession from their mothers, but they bee parceners hauing more respect to their estate that discended from their graundfather to their mothers. For they may not bee parceners where their mothers were not parceners before &c.

¶ And so to such respect and consideration, that is to wit, as to the first discent that was to their mothers, they haue a title in parcenarie, the which maketh them parceners. And also they be but as one heire to their common auncestor, that is to say, to their graundfather from whom the lande discended to their mothers. And for these causes before partition betwene them &c. they should haue one Assise, though they come in by seueral discents &c.

¶ Also, if there be two tenantes in common of certaine landes in fee, and they gyue the same land to an other man in the taile, or let it to another man for terme of lyfe, yelding an annuitie or certaine rent, and a pound of Pepper, or an Hauke, or an Horse, and they bin seised of these seruices, and after all the rent is behinde, and they distraine for it, and the tenant maketh rescous: In that case as to the rent and the pound of pepper, they shall haue two Assises: And as to the Hauke and the Horse but one Assise. And the cause why they haue two Assises as to the rent and pound of pepper is thys, in somuch that they were tenants in common by seuerall titles, and when they made a gift in the taile, or lease for terme

of

of lyke &c. sauing to them the reuersion, and yelding to them certaine rent &c. Such reseruation is incident to their reuersion.

¶ And for this that their reuersion is in common, and by seuerall titles, as their possession was before the rent, and other thinges that may bee seuered and were to them reserued vpon the gyft or vpon the lease, which bee incident by the law to the reuersion, such thinges so seuered were of the nature of the reuersion, which reuersion is to them in common by seuerall titles.

¶ And it behoueth that the rent of the pound of Pepper which may be seuered bee to them in common by seuerall titles. And of this they shall haue two Assises, and euery of them in his assise shall make his plaint of the halfe of the rent, and of the halfe of the pound of pepper &c.

¶ But of the hauke and the horse which can not be seuered, they shall haue but one Assise, for a man may not make a plaint in assise of the halfe of an hauke, or of the halfe of an horse &c. In the same maner it is of other rents and seruices that tenants in cōmon haue in grosse by diuers titles.

¶ Also as to actions personels, tenantes in common ought to haue such actions personels iointly in all theyr names, that is to say, of Trespalle, or of offences that touch their tenementes in common: As of breaking of their houses, breakinge of theyr closes and

pastures, wasting & defouling of their grasse, cutting of their wood, & to fish in their ponds, and such other: In this case tenants in common shall haue one action iointly and recouer iointly damnages, because that the action is in the personaltie and not in the realtie.

Also, if two tenants in common make a lease of their two tenementes to an other for terme of yeres, yelding vnto them yerely a certaine rent, if the rent be behind &c. the tenants shal haue one action of debt against the lessee, and not diuers actions, for that the action is in the personaltie.

Also tenants in common may make partition betweene them if they will, though they shall not bee compelled by the law. But if they make partition betweene them by their agreement and assent, such partition is good ynough, as it is adiudged in the booke of Assises, P.3.E.4.

Also, as there be tenantes in common of lands or tenements &c. as is afore said. In the same manner there bee tenants in common of chattels reall and chattels personall. As if a lease be made of certaine lands to two men for terme of xx. yeres, and when they bee thereof possessed, the one of the lessees graunteth that, that vnto him belongeth before the terme to an other, then he to whom the graunt is made and the other, shal hold & occupie in common.

Also, if two Iointenants haue the ward of the bodie and of the lands of a childe within age,

age, and the one of them graunteth to another that, that vnto him belōgeth of ẏ ſame ward, then the grauntee and the other that granteth not, ſhal haue and hold it in commen &c.

¶ In the ſame maner it is of chattels perſonals, as if two haue a toynt eſtate by gift or by buying of an hors or an Oxe &c. the one of them graunteth that, that to him belongeth of the ſame hors or oxe &c. Then the grauntee & hee that graunted not, ſhall haue and poſſeſſe ſuch chattel perſonal in common &c. And in ſuch caſes where diuers perſons haue chattels reals or perſonals in commō and by diuers titles, if the one of them die, the other that ſuruiueth, ſhall not haue that by the ſuruiuour, But the executours of him that dyeth ſhall holde and occupie that with him ẏ ſuruyueth, as their teſtatour did or ought in his life &c. for this that their titles and right in this caſe were ſeueral.

¶ Alſo, in this caſe aforeſayde, if two haue eſtate in common for terme of yeres, & the one occupy all and put the other out of his poſſeſſion and occupation, Then ſhal he that is put out of occupation, haue againſt the other a writte de Eiectione firmæ for the halfe againſt the other. In the ſame maner it is where two holde the Warde of landes or tenementes during the nonage of a childe, if one put out the other of his poſſeſſion, he that is out, ſhal haue a writte of Eiectment de garde of the halfe for this that thoſe thinges bee chatteles reals,

and may be apportioned and seuered &c. But no such action of tresspas, that is to say, Quare clausum suum fregit & herbam suam conculcauit & cõsumpsit &c. And such like actiõs the one may not haue against the other, for this that eche of them may enter and occupie in common &c. throughout and by all the tenementes which they holde in common. But if two bee possessed of chattels personels in common by diuers titles, as of an horse, or an oxe, or a cowe if the one take it all to himselfe out of the possession of the other, the other hath none other remedy but to take this of him ỹ hath done to him the wrong for to occupy in common when hee may see his time.

¶ In the same maner it is of chattells reall that may not be seuered, as the case aforesayd: two be possessioners of a ward of the body of a childe within age, if one take the childe out of the possession of the other, the other hath no remedy by any action by the lawe, but to take the childe out of the others possession when he seeth his time &c.

¶ Also, when a man in pleading will shewe a deede of feoffement made vnto him, or a gifte in the tayle, or a lease for terme of life of anie landes or tenementes, there hee shall saye by force of which feffement, gift or lease, hee was seysed &c.

But where a man wil plede a leas or a grant made vnto him of a chattel real or ꝑsonel, there he shall say by force of which he was possessed

More

More ſhalbe ſaid of tenants in common in the Chapter of Releaſes, Confirmations, and tenants per Elegit.

¶ Eſtates vpon condition.

EStates ẏ men haue in lands or tenementes be in two maners, that is to ſay, they haue eſtate vpon condition in dæde, or vpon condition in lawe. Vpon condition in dæde, is as a man by dæde indented infeffeth another in fee, reſeruing to him & to his heirs yerely a certein rent, payable at one feaſt or at diuers feaſtes by yere, vpon condition ẏ if the right be behind &c. ẏ it ſhalbe lawfull to the feoffour & to his heires to enter into the lands or tenemẽts &c. ¶ Or if the lande bee alyened to another in fee, to yelde vnto him certeine rent &c. And if it hap that the rent be behind by a weeke after any day of paiment of it, or by a moneth, or by a halfeyere after any day of payment, that then it ſhalbe lawful to the feoffor and to his heires to enter &c.

¶ In this caſe if the rent bee not payed at ſuch a time or before ſuch a time limitted and ſpecified within ẏ condition compriſed in the indẽture, thẽ may ẏ feoffor or his heires enter into ſuch landes or tenements, and them in his firſt eſtate to haue and to holde, and of this to put the feoffee cleane out, and it is called eſtate vpon condition, for this that the

estate of the feoffee is defeysible if the cõdition be not performed.

¶ In the same manner it is if landes bee geeuen in the taile, or let for terme of lyfe, or for terme of yeeres, vpon such condition &c. But where a feoffement is made of certeine landes reseruing certeine rent vpon such condition that if the rent be behind, that it shalbe lawefull to the feoffour and his heires to enter, and the lande to holde till they bee satisfyed or payed of their rent behinde &c. In thys case if the rent be behind and the feoffour and his heires enter, the feoffee is not excluded cleane out. But the feoffour shall haue and holde the lande, and take the profits till that hee be satisfied of the rent behinde &c. And when he is satisfied, the feoffee may reenter in ỹ same land and hold it as he dyd before, for in such case the feffor shall haue it but in maner for a distresse in the meane time, till he be satisfied of the rent &c. though he take the profites in the meane time.

¶ Also, dyuers wordes among other there be that by vertue of themselfe make estate vpon condition. One is this word of Condition, as A. enfeffeth B. of certeine lande, to haue and to holde to the same B. and his heires vpon condition that the same B. and his heires shall pay or do to be payed to the foresayde A. and to his heires yerely such rẽt &c. In these cases without any more saying the feoffee hath estate vpon condition. Also if the cõdition were

such

such: Prouided alway that the aforesayd B. pay or do to be payed to the aforesaid A. such rent. Or if they were thus, so ỹ the aforesayde B. pay or do to bee payed such rent. In these cases without any more saying, the feffee hath estate but vpon cõdition, so that if he performe not the condition, the feoffour and his heires may enter &c.

¶ Also, other wordes there be in a deede that causeth the tenementes to be conditionels, as vpon such a feoffement a rent is reserued to the feoffor &c. & after it is put in the deed that if it chaunce the aforesaid rent to bee behinde in part or in all &c. that then it shall be lawful to the feoffour and to his heires to enter. And this is a deede vpon a condition. But there is diuersitie betweene the wordes (if it chaunce.) &c. and the wordes next aforesayde. For this worde (if it chauuce) &c. is nought worth to such condition, but if it haue these wordes following, that is to say, that it shalbe lawful to the feoffour and to his heires to enter &c. But in these cases aforesaide, it nedeth not by the lawe to put such clause, that is to saye, that the feoffour and his heires may enter &c. for this that they may so do by force of the wordes aforesayde, because they conteyne in them selfe in the lawe a condition, that is to saye, that the feoffour and his heires maye enter. Yet it is common in all suche cases aforesayde, to put such clauses in the deedes, that is to say, if the rent bee behinde

&c.

&c. that it shalbe lawfull to the same feoffour and his heires to enter &c. And this is well done to that intent for to declare and expresse to the lay men that be not learned in the law, the maner and the condition of the feoffement &c. As a man seised of lande as of franktenement, let the same land to another by deede indented for terme of yeres, yelding vnto him certein rent, it is vsed to put in ỹ deede that if the rent bee behinde at the day of payment by a moneth &c. That then it shalbe lawful to the lessour to distreine &c. and yet the lessour may distraine of common right for the rent behinde &c. though such wordes neuer were set in the deede &c.

¶ Also, if a feoffement bee made vpon such condition, that if the feoffour pay at a certaine day &c. xx. li. of money, that then the feoffour may enter &c. In this case the feoffee is called tenant in mortgage, that is as much to saye in frenche as Mortgage, and in latin Mortuum vaduum, and in Englishe a dead pledge. And it seemeth that the cause why it is called Mortgage, is ỹ it standeth in doubt if the feoffour will pay at the day limitted, such a summe or not, and if he pay not, then the land that is put in pledge vpon condition for the payment of the money, is gone from him for euer, & so dead as to the tenant &c.

¶ Also, as a man may make a feoffement in fee in mortgage, so may a man make a gift of the tayle in mortgage, and a lease for terme

of

of life, or for terme of yeres in mortgage. And al such tenants be tenants in mortgage after the state that they haue in the lands &c.

¶ Also, if a feoffement bee made in mortgage vpon condition that the feoffour shall paye such a summe at such a day &c. as is betweene them by their deede indented accorded and ymitted, though the feoffour die before the day of payment &c. yet if the heire of the feoffour paye the same summe within the day to the feoffee, or profer him the money, and the feoffee refuseth to receiue it, then may the heire enter into the landes. And yet the condition is, if the feoffour pay such a summe at such a day &c. and not making mention in the condition of any payment to bee made by his heire, but for this that the heire hath interest of ryght in the condition &c. and the intent was but that the money shoulde bee payed at such a day set &c. and the feoffee hath no more dammage to bee payed by the heire, then though he were payed by the father &c. for this cause if the heire paye the money or tendreth the money at the day set &c. and the other refuseth it, hee may well enter. But if a straunger of his owne head that hath no interest &c. would tender and pay the money at the day sett, then the feoffee is not bounde to receiue it &c.

¶ Also, it is to be had in minde that in such case where such lawfull tender of the money

is

is made, and the feoffee refuſeth to receiue it, wherefore the feoffour or his heires do enter &c. then the feoffee hath no remedy to haue the mony by the common law, for this that it ſhal be retted his owne folye that he refuſed the money when lawfull proffer was made of it vnto him &c.

¶ Alſo, if a feoffement be made wᵗ ſuch condition, that if the feoffee paye to the feoffour at ſuch a day betweene them limitted xx.li. ẏ then the feoffee ſhal haue the land to him and to his heires, and if he fayle to pay the money at the day &c. ẏ then it ſhalbe lawfull to the feoffour or to his heires, to enter &c. & if after, beefore the day ſet, the feoffee ſelleth the land to another, & thereof maketh a feffement vnto him, in this caſe if the ſecond feffee will tender ẏ ſũme of money at the day ſet to the feoffour, and the feoffour refuſeth it &c. then hath the ſeconde feoffee eſtate in the lande clerely without condition. And ẏ cauſe is, for ẏ the ſeconde feoffee had intereſt in the condition for ſaluation of his tenancy. And in this caſe it ſeemeth that if the firſt feoffee after ſuch ſale of the land will tender the money at the day ſet &c. to the feoffour, that ſhalbee good ynough for the ſaluation of the eſtate of the ſeconde feoffee, for this that the firſt feoffee was priuy to the condition, and ſo the tender of any of them is good ynough &c.

¶ Alſo, if ẏ feffemẽt be made vpon condition, that if the feffor pay a certaine ſumme of mony

to

to the feoffee: that then it shalbe lawfull to the feoffor, and to his heires to enter &c. In this case if the feoffor die before the day of paiment, and the heire will tender to the feoffee the money, such tender is voide: for this that the time within which the tender ought to bee made, is past. For when the condition is, that if the feoffor pay the money to the feoffee, this is as much to say, that if the feoffor during his life pay the money to the feoffee &c. And when the feoffor dyeth, then the time of the tender is past. But otherwise it is where a day of payment is limitted, and the feoffor dyeth before the day, then may the heire tender the money, as is aforesaid, for this that the time of the tender was not past by the death of the feoffor. Also it seemeth in such case where the feoffor dyeth before the day of payment, if the executors of the feoffor tender the money to the feoffee at the day of payment, the tender is good ynough. And if the feoffee refuse this, the heires of the feoffee may enter &c. And the cause is for this, that the executors represent the person of their testator &c.

¶ And note wel, that in all such cases of condition of payment of certain summe in grosse, touching lands or tenements, if lawful tender be once refused, he that ought to pay the money is therof quited & clerely discharged for euer.

¶ Also, if the feffee in mortgage before the day of paymẽt that shalbe made vnto him make his executors & dye, & his heire enter into the land as

as he ought. It ſeemeth in this caſe that the feoffor ought to pay the money at the day ſet to the executors, & not to the heire of the feffee, for this that the money at the beginning belonged to the feoffee in maner as a duitie. And it ſhalbe vnderſtoode, that the eſtate was made becauſe of borowing of the money of the feoffee, or becauſe of an other duitie, and for this the payment ſhall not be made to the heire of the feoffee as it ſeemeth. But the wordes of the condition may be ſuch, that the payment ſhalbe made vnto the heire, as if the condition were that the feoffor pay to the feoffee, or to his heirs, ſuch a ſumme at ſuch a day &c. There after the death of the feoffee (if hee die before the day limitted) then the payment ought to be made to the heire at the day ſet &c.

¶ Alſo in ſuch caſe of a feoffement in mortgage, a queſtion hath bin demaunded in what place the feoffor is bound to tender the money to the feoffee at the day ſet &c. And ſome haue ſaid, that vpon the land ſo holden in mortgage, for this, that the condition is dependant vpon the land, and they haue ſaid, that if the feoffor be readie vpon the lande to pay the money at the feaſt or day ſet, and the feoffee be not at that time there, that then the feoffor is excluded and diſcharged of payment of the money, for thys that no default was in him: But it ſeemeth to ſome men that the law is contrarie, and the default is in him: for hee is bound to ſeeke the feoffee if he be then at that time in any maner

of

of place within the Realme of England. As if a man be bound in an obligation of xx. pound vpon condition indorced vpon the obligation, that if he pay to him to whom the obligation is made at such a day x. li. that then the obligation of xx. li. shal lose his force, and shalbe holden for nought: In this case it behoueth him that made the obligation to seeke him to whom the obligation is made, if hee be within England, and at the day set, to tender him the said x. li. &c. And otherwise he forfaiteth the summe of xx. li. comprised within the obligation, and so it seemeth in the other case &c. And though that some haue said that the condition is dependant vpon the land, yet this is not proued that the feasance of the condition to be performed ought to bee made vpon the land &c. No more then if the condition were, that if the feffor should do at such a day &c. an especial corporall seruice to the feoffee, not naming the place where the corporall seruice should bee done: In this case the feoffor ought to do such corporal seruice at the day limitted to the feoffee, in what soeuer place in England that the feoffee be, if he will haue aduantage of the condition &c. And so it seemeth in that other case. And it seemeth to them, that it shalbe more properly said, that the estate of the land is dependant vpon the condition &c. then to say, that the condition is dependant vpon the land, but inquire &c.

¶ But if a feoffement in fee bee made reser-

uing

nyng to the feoffor an annuel rent, and for de-
fault of payment a reentrie &c. in this caſe it
needeth not to the tenaunt to tender the rent
when it is behinde, but onely vpon the land,
for this, that this is a rent going out of the
land, which is rent ſecke. For if the feoffor be
once ſeiſed of his rent, and after hee commeth
vpon the land &c. and the rent is denied hym
&c. he may haue an Aſsiſe of Nouel diſſeiſin, for
though hee may enter becauſe of the condition
broken, yet he may chuſe, that is to ſay, to en-
ter, or to haue an Aſſiſe. And ſo is there diuer-
ſitie as to the tender of the rent that is going
out of the land, and of tender of another ſume
in groſſe, which is not going out of any lande.
And therefore it ſhalbe ſure and a good thing
for them that will make ſuch feoffement in
mortgage, to put and ſet a ſpeciall place where
the money ſhalbe paied. And the more ſpecial
that it is put, the better it is for the feoffor.
As if A. infeoffe B. to haue to him and to his
heires vpon ſuch condition, that if A. pay to
B. in the feaſt of Saint Michaell the archan-
gell next comming, in the cathedrall Church
of S. Paule of London, within iiij. howers
next before the hower of none of the ſame feaſt
at the rode loft of the North dore within the
ſame Church, or any other certain place with-
in the ſame church: that then it ſhalbe lawfull
to the foreſaid A. and to his heires to enter &c.
In ſuch caſe it needeth not to ſeeke the feoffee
in any other place, but in the place compryſed

in

in the indēture, nor to be there more lōger time then the time specified in the same indenture, for to render or pay the money to the feoffee.

¶ Also in such case where the place of payment is limitted, the feffe is not bound to receiue the payment in none other place, but in the place so limitted. But yet if he receiue the payment in any other place, ỹ is good ynough and as strong for the feoffour, as if the rescept had bene in the place so limitted &c.

¶ Also in this case of feoffement in morgage, if the feoffour pay the feoffee an horse or a cup of siluer, or a ringe of golde, or any other such thing in full satisfaction of the money, and the other this receiueth, this is good ynough, and as strong as if he had receiued the summe of money, though the horse or anye of the other thinges bee not the twenteth part worth in value of the summe of money, for this that the other hath accepted it in pleine and full satisfaction.

¶ Also if a man infeoffe an other in fee vppon condition that hee and his heires shall yeelde to a stranger and his heires a yearely rent of xx. s. and if he and his heires fayle of payment of this, that then it shalbe lawful to the feoffour and to his heires to enter, this is a good condition. And yet in this case though such a yearely rent be called an Annuel rent, this is not properly a rent, for if it shalbe rent it ought to be rent seruice, rent charge, or rent secke, and it is none of them, for if the straun-

ger were ſeyſed of this, & after it were to him denyed, he ſhall neuer haue an aſſiſe of this, for this that it iſſueth not out of any landes, and ſo the ſtraunger hath no remedy if any ſuch yearely payment be behinde in this caſe, but that the feoffour and his heires may enter &c. and yet if the feoffour and his heires enter for default of payment, then ſuch rent is gone for euer. And ſo ſuch rent is but a payment ſet to the tenant and to his heires, that if they will not pay this after the forme of the indenture, that they ſhall leeſe their land by the entre of the feoffour or his heires for default of payment. And in this caſe it ſæmeth that the feffee & his heires ought to ſæke the ſtraunger & his heires if they be in England, becauſe that no place is limitted where the payment ſhalbe made, and becauſe that ſuch rent is not going out of any lande &c.

¶ And here note well ij. thinges, one is that no rent that is properly ſaide rent, may be reſerued vpon any feoffement, gift, or leaſe, but onely to the feoffor or to the leſſour, or to their heires, & in no maner may be reſerued to any ſtraunge perſon. But if ij. tointenants make a leaſe by dæde indented, reſeruing to the one a certaine yearely rent, that is good ynough to him to whom the rēt is reſerued, for this that he is priuie to the leaſe and not a ſtraunger to this &c. The ſecond thing is, that no entre or reentre (which is all one) may be reſerued nor giuen to any perſon, but onely to the feoffour

or

or to the donour or to the lessour, or to their heires, and such entre maye not be alyened nor grāted to any person. For if a man let land to another for terme of life by indenture, yelding to the lessor & to his heires certeine rent, & for default of payment a reentre &c. if after ỹ lessor by a deede graunt the reuersion of the lande to another in fee, & the tenant for terme of life attorneth &c. if the rent after be behind, the grātee of the reuersion may distreine for ths rent, for this that the rēt is incident to ỹ reuersion, but he may not enter into the land and put out the tenant as the lessour might, or his heires, if the reuersion had ben continued in them &c. And in this case the entre is taken away at al times, for the grauntee of ths reuersion may not enter, Causa qua supra. And the lessour nor his heires may not enter, for if the lessor may enter, then he ought to be in his first estate &c. & that may not bee, for this that he hath put from him the reuersion &c.

¶ Also if there be Lord and tenant, and the tenant make such a lease for terme of life, yeelding to the lessour & to his heires, such yerely rent, and for default of payment a reentre &c. if after the lessour dye without heire, during the state of the tenaunt for terme of life, by which the reuersion commeth to the Lorde by way of Escheate, and after the rent of the tenant for terme of life is behinde, the Lorde may distraine the tenant for the rent behinde, but he may not enter into the lande by force of

the condition &c. for this that he is not heyre to the feoffour &c.

¶ Also if land be granted to a man for terme of yeares vpon condition, that if he pay to the grauntor win ỹ. yeres xl. markes, that then he ſhall haue the lād to him & to his heires &c. In this caſe if the grauntee enter by force of the graunt, & after he payeth to the grauntour xl. markes win the ỹ. yeares, yet he hath nothing in the lād but for terme of the ỹ. yeres, for this p̄ no liuerie of ſeiſin was to him made at the beginning, for if he had had franktenement & fee in this caſe, becauſe he hath perfourmed the condition, then ſhould he haue franktenement by force of the firſt graunt where no liuery of ſeiſin was made thereof, which ſhould bee againſt reaſon &c. But if the graūtor had made liuerie of ſeiſin to the grauntee by force of the graunt, then hath the grauntee the franktenement & the fee vpon the ſame condition.

¶ Also if landes be graunted to a man for terme of fiue yeares, vpon condition that hee paye to the grauntour within the firſt two yeres xl. markes, that then he ſhall haue fee, or els but for terme of the fiue yeares, and liuerie of ſeiſin is made to him by force of the graunt. Now he hath a fee ſimple conditionel &c. and if in this caſe the grauntee pay not to the grātour the xl. markes within the ſame two firſt yeres, then immediatly after the ſame ỹ. yeres the fee and the franktenement is and ſhall be adiudged to the grauntour, for this that the graun-

grauntour may not after the two yeres incontinent enter vpon the grauntee, for this that the grauntee hath yet title by three yeares to haue and to occupie the land by force of ỹ ſame graunt. And ſo for this, that the condicion of part of the grauntee is broken, and the grauntour may not enter, the law ſhall put the fee & franktenement in the grauntor. For if ỹ grantee in this caſe make waſt, then after the breaking of the condition &c. and after the ij. yeres the grauntor ſhall haue his writ of waſt, and this is a good proſe that the reuerſion is to him &c. But in ſuch caſe of feoffements vpon condition where the feoffour may enter lawfully for the condition broken &c. There the feoffour hath the franktenement before the entre &c.

¶ Alſo, if a feoffement be made vpō ſuch condition, that the feoffee ſhall giue the lande to the feoffour, and to the wife of the feoffour, to haue and to holde to them and to the heyres of their two bodies engendred, and for default of ſuch iſſue, to remayne to the right heires of the feoffour. In this caſe if the huſbande dye, lyuing the wife before eſtate in the tayle made to him, then ought the feoffee by the lawe to make eſtate to the wife, as like to the condition, and as like to the intent of the condition as he may make it, that is to ſaye, to let the lande to the wife for terme of life without impechment of waſte, the remainder after her deceaſe to the heires engen-

dred of the bodie of her husbande and hers, and for default of such issue, the remainder to the right heires of the husband.

¶ And the cause why the lease shalbe made in this case to the woman sole without impechment of wast, is for this, that the condition is, ꝑ the state shalbe made to the husband and his wife in taile. And if such estate had bene made in the life of the husbande, then after the death of her husband she hath estate in the taile sole, which estate is wout impechment of wast, & so it is reason, ꝑ if after a man may make estate to the intent of the condition &c. ꝑ he shal make it &c. though that she cānot haue estate in ꝑ taile as she might haue had, if the gifte in the tayle had bæn made to the husband and to her in the life of her husbande &c.

¶ Also in this case if the husband & the wife haue issue & die before the gift in the taile made vnto them &c. then ought the feffæ to make estate to the issue, & to the heires of the father & mother engendred, & for defaut of such issue &c. the remainder to ꝑ right heires of the husband &c. And ꝑ same law is in other cases lēblable, and if such a feffour will not make such estate when he is reasonably required by them that ought to haue estate by force of ꝑ condition &c. then may the feoffour and his heires enter &c.

¶ Also if a feoffement be made vpon condition, that the feoffee shall enfeoffe many men, to haue and to holde, to them and to their heires for euer, and all they that ought to haue

haue estate, die before any estate made vnto the the̅ ought the feffee to make ꝑ estate to ꝑ heires of him ꝑ suruiueth of them, to haue & to holde to him, & to the heires of him ꝑ suruiued &c.

¶ Also if a feffement be made vpon condition to enfeoffe another, or to giue in the tayle to another &c. if the feoffee before the performing of the condition enfeoffe a straunge person, or make a leafe for terme of life, then may the feffour and his heires enter &c. for this, that hee hath disabled himselfe to performe the condition, in so much that he made estate to an other &c. In such manner it is, if the feoffee before the condition performed, let the same lād to a straunger for terme of yeres. In this case the feoffor or his heires may enter &c. for this that the feffee hath disabled him selfe to make estate of the tenementes according to that, that was in the tenements when estate thereof was made vnto him, for if hee will make estate according to the condition &c. then may the feoffee for terme of yeres enter and put out him to whom the estate is made &c. and to occupie this during his terme. And manie haue saide, that if such a feoffement bee made to a man sole vppon the same condition, and before that hee hath performed the condition hee taketh a wife, then the feoffour or his heire may incontinent enter, for this that if hee haue made estate according to the condition, and after dyeth, his wife shall bee endowed & may recouer her dowrie by a writ of

power &c. And ſo by taking of a wife the tenementes be put in other plyte then they were at the time of the feoffement vpon condition, for this that no ſuch woman was dowable, nor ſhould be endowed by the law &c.

¶ In the ſame maner it is, if the feffor charge the land by his deede of rent charge before the perfourming of the condition, or be bound in a ſtatute ſtaple, or ſtatute marchant, that in ſuch caſes, the feoffour and his heires may enter, cauſa qua ſupra. For whoſoeuer commeth to the tenementes by the feoffment of the feoffee, then the tenementes muſt be lyable, & be put in execution by force of the ſtatute aforeſaide. But when the feoffor or his heires for the cauſes aforeſaid haue entred ſo as they ought as it ſeemeth &c. Then all ſuch things that before ſuch entre may trouble or incumber the tenemẽts ſo giuen vpon condition, as touching the ſame tenement, be vtterly defeated &c.

¶ Alſo if a man make a deede of feoffement to another, & in the deede is no condition &c. And when the feffor wil make to him liuerie of ſeiſin by force of the ſame deede, he maketh liuerie of ſeiſin vpon certaine conditions &c. In this caſe nothing of the tenementes paſſeth by the deede, for this that the condition is not cõpriſed in the deede, & the feffement is of ſuch force as if no ſuch deede had beene thereof made &c.

¶ Alſo if a feffement be made vpon ſuch condition, ỹ the feffee ſhal not alien the land to any man, this cõdition is void, for this, that when a man

a man is enfeoffed in landes or tenementes, he hath power to alyen them to some person by the lawe. For if such condition shoulde bee good, then the condition putteth him out of all the power that the lawe giueth, which should be against reason, and for this such condition is voide. But if the condition bee such, that the feffee shall not alien to one such, naming his name, or to any of his heires or his issues &c. or such other like, the which condition taketh not away all the power of alienation of the feoffee &c. then such condition is good.

¶ Also, if tenementes be giuen in the tayle, vpon such condition, that the tenaunt in the tayle, nor his heires &c. shall not alien in fee, nor in tayle, nor for terme of anothers life, but for their owne liues &c. such alienation & condition is good. And the cause is for this, that when he maketh such alienation and discontinuance, he doth contrarie to the intent, for which the statute of Westminister the seconde was made, by which estatute, the estates in the tayle be ordeyned, for it is proued by the words compryzed in the same estatute, that the intent of the making of the same statute was, that the will of the donor in such cases should be obserued. And when tenant in the taile maketh such discontinuance he doth the contrarie to that &c. And also in estates in ỹ taile of any tenemẽts when the reuersion of the fee simple is in another person, when such discontinu-

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ance is made, then the fee simple in the reuersion, or the fee simple in the remainder is discontinued, & for that that the tenãt in the taile shall do no such thing against right, such conditions are good, as it is aforesaid &c.

¶ Also a man may giue land in the taile vpon such condition, that if the tenant in the taile or his heires alien in fee, or in tayle, or for terme of anothers life &c. And also, that if all the issues comming of the tenant in the tayle be deade without issue, that thẽ it shalbe lawfull to the donor & to his heires to enter &c. & by such way the right of the tayle may be saued after such discontinuance to the issue in ỹ tayle if there be any, so that by way of entre of the donor or of his heires, the taile shall not be defeated by such condition, & yet if ỹ tenant in the taile in this case, or his heires make any discontinuãce &c. he in ỹ reuersion or his heires after this ỹ the taile is determined for default of issue &c. may enter into the land by force of the same condition, and shall not be driuen to sue a writ of Formedon in the reuersion.

¶ Also, a man may not pleade in an action that estate was made in fee, in the tayle, or for terme of life vpon condition, but if he vouch a record therof, or shew a writing vnder seale, prouing the same condition, for it is a common erudition & learning, ỹ a man by pleading shal not defeat any estate of franktenemẽt by force of any such condition, vnles he shew the proofe of such condition in writing &c. except it be in

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some especiall case, but of chattels reals, as of a lease made for terme of yeres, or of grauntes of wardes made by wardens in chiualrie, & of such other &c. A man may plede ỹ such giftes or grauntes were made vpon condition &c. without shewing of any writing of condition, & in the same maner a man may doe of giftes and grauntes of chattels personels, & of contractes personels &c.

¶ Also, though that a man in some action may not plede an action that toucheth and concerneth franktenement without shewing of writing thereof, as it is aforesaid, yet a man may be holpen vpon such condition by the verdicte of xij. men taken at large in Assise of disseisin, or in some other action where the Justices will take the verdicte of the twelue Jurours at large. As put the case that a man seised of certaine lande in fee, letteth the same land for terme of life without deede, vppon condition to yeelde to the lessour a certaine rent, and for default of payment a reentre &c. by force of which the lessee is seysed as of a franktenement, and after the rent is behinde, by which the lessor entreth into the land, & after ỹ lessee arrayneth an Assise of Nouel disseisin of the land against the lessour, the which pleadeth that he doth no wrong, ne no disseisin, and vpon this the Assise is taken.

¶ In this case the recognitors of the Assise may say & yeld to the Justices their verdict at large vpon all the matter, as to say that the de-

defendant was ſeiſed, & ſo ſeiſed, let the ſame lād to the plaintife for terme of his life, to yeld to the leſſour ſuch annuel rent payable at ſuch a feaſt, & vpon ſuch condition, that if the rēt be behind at any ſuch feaſt ỹ it ought to be paied, ỹ thē it ſhalbe lawful to the leſſor to enter &c. by force of which leaſe the plaintife was ſeyſed in his demeſne as of franktenemět, & after ỹ rent was behind at ſuch a feaſt in ſuch a yere &c. for which the leſſour entred into the lande vpon the poſſeſſiō of the leſſee, and prayeth the diſcretion of the Juſtices, if this bee a diſſeiſin done to the plaintife or not. And then for this ỹ it appeareth to ỹ Juſtices, that this was no diſſeiſin done to the plaintife, in ſo much that ỹ entre of the leſſour was lawful vpon him, the Juſtices ought to giue iudgemēt, ỹ the plaintif ſhal take nothing by his writ of aſſiſe. And ſo in ſuch caſe the leſſour ſhall be holpen, & yet no writing was euer made of the cōdition, for as well as the iurors may haue knowledge of the leaſe, in the ſame manner may they haue knowledge of the condition rehearſed in the leaſe. In the ſame maner is it of a feoffemēt in fee, or a gift in the taile vpon cōdition, though neuer writing were made thereof &c. And as it is ſaide of a verdict at large in aſſiſe, in the ſame manner it is of a writ of Entre founded vpon diſſeiſin, and in al other actions where ỹ Juſtices will take a verdict at large, there where the verdict at large is made the nature of the matter is put in the iſſue.

¶ Alſo

¶ Also in such case where ẏ enquest may say their verdict at large, if they will take vpō thē ẏ knowledge of the law vpon the matter, they may say their verdict generall, as it is put in their charge, as in the case aforesaid, they may well say that the lessour disseised not the lessee if they will &c.

¶ Also in the same case, if the case were such that after this that the lessour had entred for defaut of payment &c. that the lessee had entred vpon the lessour, and him disseised. In this case if the lessour arrayneth an Assise against the lessee, the lessee may barre him of his Assise, for hee may pleade against him in barre, how the lessour that is plaintife made a lease to the defendant for terme of life, sauing the reuersion to the plaintife, the which is a good plee in barre, in so much that he knowledgeth the reuersion to be to the plaintife, and in this case he hath no matter to helpe him, but the cōdition made vpon the lease, and that hee may not pleade, for that he hath no writing, and in so much ẏ he may not aunswere to the barre, he shalbe barred. And so in this case ye may see, ẏ a man is seised, & he shall haue assise, and yet if the lessee be plaintife, and the lessor defendant he shall barre the lessee by verdict of the assise. But in this case where the lessee is defendant, if he will not plede the saide plee in barre, but plede no wrong ne disseisin, then the lessor shall recouer by assise, Causa qua supra.

¶ Also because such conditions be most com-

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monly put & specified in dedes indented, some litle thing shalbe said here (to thee my sonne) of indentures, & of a dede Poll cõteining conditions. And it is to wit, ỹ if the indenture be bipertite or tripertite, or quadripartite, all the parts of the indenture be but one dede in the lawe, & euery part of the Indenture is of him selfe of as great force and effect, as al the parts together. And the making of Indentures is in two manners. One is to make them in the third person, an other maner is to make thẽ in the first person. The making in the iij. person is as in such forme. This Indẽture made betweene A. of B. of the one part, & C. of D. of ỹ other parte, witnesseth ỹ the foresaid A. of B. hath giuen & graunted, & by this present dede indẽded, hath cõfirmed to the foresaid C. of D. such land, to haue &c. vpon ỹ condition &c. In witnesse whereof the parties beforе said interchãgeably haue put to their seales, or els thus In witnes whereof to the one part of this indẽture remaining w̃ the said C. of D. the foresaid A. of B. hath put to his seale, & to the other part of ỹ said indenture remaining w̃ the saide A. of B. the said C. of D. hath put to his seale, giuen &c. Such indentures are called indẽtures made in the third person, for this ỹ the verbes be in the third person, & such forme of indenture is the more sure making, for that it is more commonly vsed. The making of indentures in the first person is of such fourme. ¶ To al true Christian people to whom this

present writing indented shall come, A. of B. greeting in our Lord euerlasting. Know ye me to haue giuen & graunted, & by this my present deede indented to haue confirmed to C. of D. such lande &c. Or els thus, know all men that be present, & them that be to come, that I A. of B. haue giuen and graunted, & by this my present deede indented haue confirmed to C. of D. such lande &c. to haue &c. vpon the condition following, In witnes whereof aswell I. the said A. of B. as the aforesaid C. of D. to these indentures interchangeably haue put to our seales, or els thus. In witnes whereof to one part of this indenture I haue put to my seale, & to the other part of the same indenture, the foresaid C. of D. hath put to his seale &c.

¶ And it seemeth that such an indenture made in the first person, is as good in the law as the indenture made in the third person, whē both parties haue thereto put their seales, for in the indenture made in the third person or in ỹ first person, if mention be made that the grauntour hath set his seale onely, and not the grauntee, then is the indenture onely the deede of the grauntour. But where mention is made that the grauntee hath set his seale to the indenture &c. then is the indēture as wel the deede of the grauntour, as the deede of the grauntee, and thus it is the deede of both, & also euery part of the indenture is the deede of both parties in such case &c.

¶ Also if estate bee made by Indenture to a

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man for terme of his life, the remainder to an other in fee vppon condition &c. and if the tenant for terme of life hath set his seale to one part of the indenture and after dyeth, and hee in the remainder &c. entreth by force of his remainder, in this case he is holden to performe al the conditions comprised within the indenture, as the tenant for terme of life ought to doe in his life, and yet hee in the remaynder neuer sealed anye part of the indenture, but the cause is, that in so much that hee entreth and agreeth to haue the land by force of the indenture, he is holden to performe the condition within the indenture if hee will haue the lande &c.

¶ Also if a feoffement be made by deede Poll vpon condition &c. And for this that the condition is not performed, the feoffour entreth and hapeth the possession of the deede Poll, if the lessee bring an action of that entre against the feoffour, it hath beene a question if the lessour may pleade the condition &c. by the deede Poll against the feoffee, and some haue saide nay, in so much that it seemeth vnto thē that a deeds Poll, & the propertie of the same deede appertaineth to him to whome the deede is made, and not to him that made the deede. And in so much that such a deede appertayneth not to the feoffour, it seemeth to them that he may not plede this deede &c. And other haue saide the contrarie, and haue shewed diuers causes. One is, if the case be such ẏ in the action betweene

twene them the feffee plead the same deede, and shew this to the Court. In this case in so much that the deede is in the court, the feoffor may shew to the court, how in the deede be dyuers conditions to be performed of the part of the feffee, & for this that they be not performed hee entred &c. and thereto he shalbe receiued: by the same reason when the feffor hath the deede in hand & sheweth it to the court, he shalbe wel receiued to plede of this &c. And namely when the feffor is priuie to the deede, for he ought to be priuie to the deede, when he made the deede.

¶ Also, if two men make or do a trespas to an other, the which releaseth to one of them by his deede, all actions personels &c. Notwithstanding he sueth an action of Trespas against the other, the defendant may well shew that the trespas was done by him and an other his fellow, and that the plaintife by the deede that he shewed forth releaseth to his fellow, all actions personels, and yet such deede appertayneth to his fellow, & not vnto him, but for this that he may haue aduantage by the deede, if hee will shew the deede to the Court, he may well plede &c. Therefore by the same reason in the other case, when the feoffor ought to haue aduantage by the condition compriſed within the deede poll.

¶ Also, if the feoffee gaue or graunted the deede Poll to the feoffor, such graunt shalbe good, and then the deede & the propertie of the deede appertayneth to the feoffor. And when the

feoffor hath the deede in hand, and pleadeth it to the Court, it ſhalbee rather vnderſtanded that hee came to the deede by a lawfull meane then by a tortious meane. And ſo it ſeemeth that they may wel plede ſuch a deede Poll, that comprehendeth condition &c. if hee haue the deede in hande &c. Ideo ſemper Quære de dubijs, quia per rationes peruenitur ad legitimam rationem.

¶ Eſtates that men haue vpon condition in the law bee ſuch eſtates that haue a condition in the law annexed to them, though it bee not ſpecified in writing, ſo as a man graunt by his deede to an other the office of a Parkerſhip of a Parke, to haue and to occupie the ſame office for terme of his life, the eſtate that he hath in the office, is vpon condition in the law, that is to ſay, that the Parker well and truely ſhal keepe the Parke, and do that, that to the office appertayneth to do: or otherwiſe, that it ſhal be lawfull to the graunter and to his heires to put him out, and to graunt that to another if he wil &c. And ſuch condition as is vnderſtood by the law to be annexed to ſome thing, is as ſtrong as if the condition were ſet or put in writing. In the ſame maner it is of graunts of offices of Stewardes, Conſtables, Bedels, Bailifes, and other Officers. But if ſuch office be graunted to a man to haue and to occupie by him or by his deputie, then if the office be occupied by him or by his deputie as it ought by the law to bee occupied, this ſuffiſeth for him, or elſe the graunter or his heires may put him out

as

as is aforesaid.

¶ Also estates of lands or tenements may bee vpon condition in the law, though that vpon the estate made, there was no rehersal made of the condition. As put the case that a lease bee made to the husband and his wife, to haue & to hold to thē during the couerture betwen them, in this case they haue estate for terme of their two liues vpon condition in the law, that is to say, if one of them die, or if deuorce be made betwene them, that then it shalbe lawfull to the lessor & his heires to enter &c. & that they haue estate for terme of their two liues, it is proued thus: Euery man that hath estate or franktenement in any lāds or tenemēts, either he hath estate in fee, or in fee taile, or for terme of lyfe, or for terme of anothers life, & yet by such lease they haue franktenemēt, but they haue not by the graunt, fee, nor taile, nor for terme of anothers life, Ergo they haue estate for terme of their two liues, but this is vpon condition, in the law in forme aforesaid. And in this case if they make wast, the lessor shal haue against thē a writ of wast, supposing by his writ, Quod tenent ad terminum vitæ &c. but in his plee, he shall declare how and in what maner the lease was made. In ỹ same maner it is, if an Abbot make a lease to a man, to haue & to hold during ỹ time that the lessor is Abbot: In this case the lessee hath estate for term of his own life, but this is vpon cōdition in law, ỹ is to say, that if the abbot die, or resign, or be deposed, it shalbe lawful

to his ſucceſſors to enter &c.

¶ Alſo a man may ſee in the Booke of Aſsiſes, An 38. E. 3. a plee of Aſſiſe in this forme that enſueth. Aſſiſe of Nouel diſſeiſin was ſometime brought againſt one A. that pleaded to the Aſſiſe, & was found by verdict that the auncestor of the plaintif deuiſed the tenements to be ſold by the defēdant that was his executor to make diſtribution of the money for his ſoule: And it was found, that a man after the death of the teſtator tendered him a certain ſumme of money for the tenements, but not to the value, & that the executor after held ỹ tenements in his owne hand by two yere, to the intent to haue ſold the tenements more deerer to ſome other: And it was found that he had al the while after taken the profites of the tenements to his owne vſe, without any thing doing for the ſoule of the dead. ¶ Mombray, the executor in ſuch caſe is holden by the law to make the ſale as ſoone as he may after the death of the teſtator, and it is found that he refuſed to make the ſale, & ſo the default was in him: And alſo by force of the deuiſe he was holden to haue put al the profits of the ſaid tenements to the vſe of the dead, & it is found that he hath taken them to his owne vſe, and ſo an other default is in him, wherfore it was adiudged that the plaintif ſhould recouer &c. And ſo it apeareth in the ſaid iudgment that by force of the ſaid deuiſe the executor had none eſtate or power in the tenementes, but vpon condition in the law &c. And in ſuch caſes

ſes it nedeth not to haue ſhewed any deed re-
hearſing the conditions &c. Fx paucis dictis inten-
dere plurima poſsis. More ſhalbe ſaid of cõditiõs
in the chapter of Diſcents that take away en-
tre, & in the Chapter of Releaſes, & in ỹ chap-
ter of Diſcontinuance.

¶ Diſcents.

DIſcents that take away entres be in two
maners, that is to ſay, where the diſcent is
in fee or in fee taile. Diſcent in fee that taketh
away entre is if a man ſeiſed of certeine lands
or tenementes, is diſſeyſed, and the diſſeyſour
hath iſſue & dyeth of ſuch eſtate ſeyſed: Now
the tenements diſcend to the iſſue of the dyſ-
ſeyſour by courſe of ỹ law as heire vnto him.
¶ And for this that the law putteth ỹ lands
or tenementes vpon the iſſue, & the iſſue com-
meth to the tenements by courſe of the lawe
and not by his owne deede, the entre of the diſ-
ſeiſee is taken away, and is thereof put to his
writ of entre vpon diſſeiſin againſt the heire of
the diſſeiſor to recouer the land.
¶ Diſcent in the tayle that taketh awaye
entre is, if a man be diſſeiſed, and the diſſeyſor
geueth the ſame lande to another in the taile,
and the tenaunt in the tayle hath iſſue and
dyeth ſeyſed of ſuch eſtate, & the iſſue entreth,
in this caſe the entre of the diſſeiſee is taken a-
waye, and hee is put to ſue againſt the iſſue
of the tenant in the tail a writ of Entre vpon

diſſeiſin &c.

¶ And note well that in ſuch diſcentes that take away entres, it behoueth that a man dye ſeiſed in his demeſne as in fee taile, for dyinge ſeiſed for terme of life or for terme of anothers life, ſhal neuer take away the entre &c.

¶ Alſo, a diſcent of reuerſion or of remainder ſhal neuer take away entre &c. ſo ꝑ in ſuch caſes that take away entres by force of diſcents it behoueth that he that dyeth ſeyſed haue fee and franktenement at the time of his dying, or elſ ſuch diſcent taketh not away entre.

¶ Alſo as it is ſaid of diſcēts ꝑ diſcend to the iſſue of him that dieth ſeiſed &c. the ſame lawe is where they haue no iſſu, but ꝑ tenemēts diſcēd to ꝑ brother, or to the ſiſter, or to ꝑ vncle, or to ſome other coſin of him ꝑ dieth ſeiſed &c.

¶ Alſo, if there be Lord & tenant, and the tenant be diſſeiſed, & the diſſeiſor alieneth to another in fee, & the alienee dieth without heire, & the Lord entreth as in his eſcheate: In this caſe the diſſeiſee may entre vpon the Lorde, for this that the Lord commeth not to the land by diſcent, but by eſchete.

¶ Alſo, if a man ſeiſed of certeine lande in fee, or in fee taile vpon condition to yelde certeine rēt, or vpō other cōditiō, though that ſuch tenant ſeiſed in fee or in fee taile die ſeiſed, yet if ꝑ cōdition be broken in their life, or after their deceaſe &c. this taketh not away the entre of ꝑ feoffor, nor of the donor, or of their heires, for this that the tenancy is charged with the condition

dition, and the estate of the tenancy is conditional in whose hands soeuer the tenancy shal come &c.

¶Also, if such a tenāt vpon condition be disseised, & the disseisor die thereof seised, & ẏ land discendeth to ẏ heire of ẏ disseisor, now the entre of ẏ tenant vpon condition ẏ was disseised, is taken away, but if the condition bee broken &c. then may the feoffor or ẏ donor ẏ made the estate or their heires enter &c. Causa qua supra.

¶Also, if a disseisor die seised, & his heirs enter &c. the which endoweth ẏ wife of the disseisor of the third part of the tenemēts, in this case, as to the third that is assigned to the wife in dowre, incontinēt anon after that the wife entreth & hath possession of ẏ same third part, the disseisee may lawfully enter vpon the possessiō of his wife in the same third part. And the cause is for this, that when the wife hath her dower, she shalbe adiudged in rather immediately by her husband thē by the heire, & so as ẏ franktenemēt of ẏ same third part, the dissent is defeated, & so ye may see how before the dowement the disseisee might not enter in any part &c. & after the dowement he may enter vpon the wife, & yet he may not enter vpō the other two partes that the heire of the disseisor hath by discent &c.

¶Also, if a woman be seised of lande in fee, whereof I haue right and title to enter, if the woman take an husbande and haue issue betweene them, and after the wyfe dyeth seysed,

and after that the husband dieth, & ỹ issue entreth &c. in this case I may enter vpon ỹ possession of the issue, for this that the issue commeth not to ỹ tenementes immediatly by discent after the death of his mother.

¶ Also, if a disseysour enfeoffe his father, & ỹ father entreth & dyeth of such estate seysed, by which the tenements discend to the disseysor, as to the sonne & heire &c. In this case the disseisee may wel enter vpon the disseisour, notwithstanding the discent, for this, ỹ as to the disseisin, the disseisor shalbe adiudged in but as the disseisour, notwithstanding the discent.

¶ Also, if a man seysed of certeine landes in his demeane as of fee, hath issue two sonnes and dyeth, and the yonger sonne entreth by abatement in the lande, the which hath issue, & of this dyeth seysed, and the tenementes discende to the issue, and the issue entreth into the land, in this case the elder sonne or his heires may enter by the lawe vpon the issue of the yonger sonne, notwithstanding the discent, for this, that when the yonger sonne abated in the lande after the death of his father, before any entre of the elder, the lawe intendeth that hee entreth in clayming as heire vnto his father, and for this that the elder brother claymeth by the same tytle, that is to say, as heire vnto his father, hee and his heires may enter vpon the issue of the yonger brother not withstanding the discent &c. for this that they claime by one selfe title. And in the same maner

ner it ſhalbe if there be many diſcents frō one iſſue to another iſſue of ẏ yōger ſonne &c. But in ſuch caſe if ẏ father were ſeyſed of certeine lāds in fee, & hath iſſu ij. ſōnes & dieth, & ẏ elder ſōne ētreth & is ſeiſed &c. And after ẏ yonger brother diſſeiſeth him, by which diſſeyſin he is ſeyſed of fee, and hath iſſue, and of ſuch eſtate dyeth ſeiſed, then the elder brother may not enter, but is put to his writ of entre vpon diſſeiſin for to recouer the land. And the cauſe is for this, that the yonger brother commeth to the tenementes by a wrong diſſeiſin made vnto his elder brother. And for that wrong ẏ lawe may not entend ẏ hee claimeth as heire to his father no more then if a ſtraunge perſon had diſſeyſed the elder brother that neuer had any title &c. And ſo may yee ſee the diuerſitie where the yonger brother entreth after the death of his father, before any entrie made by the elder brother in ſuch caſe &c. and where the elder brother entreth after ẏ death of his father, and is diſſeyſed by the yonger brother &c. In the ſame maner if a man ſeiſed of certayne lande in fee, hath iſſue two daughters, & dieth, & the elder daughter entreth in ẏ land, claiming al the lande to her, and thereof onely taketh the profites, and hath iſſue and dyeth ſeyſed, by which her iſſue entreth, which iſſue hath iſſue and dyeth ſeyſed, and the ſeconde iſſue entreth &c. & ſic vltra. Yet the younger daughter and her iſſue as to the halfe maye enter vpon euery iſſue of the elder daughter,

not

notwithſtãding ſuch diſcẽt, for this that they claime by one ſelfe title &c. But in ſuch caſe if both two ſiſters come into the lande to enter after the death of their father, & thereof were ſeiſed, and after the elder ſiſter thereof diſſeiſed the yonger ſiſter of that, ꝑ to her belongeth, & therof is ſeiſed in fee, & hath iſſue, & of ſuch eſtate dieth ſeiſed, by which the tenements diſcend to the iſſue of the elder ſiſter, then the yõger ſiſter or her heires may not enter &c. Cauſa qua ſupra.

¶ Alſo, if a man ſeiſed of certaine lande hath iſſue two ſonnes, and the elder brother is baſtarde, and the yonger brother mulier and the father dyeth, and the baſtard entreth and claimeth as heire vnto his father, and occuppeth the land all his life without anie entre made vpon him by the mulier, and the baſtarde hath iſſue and dyeth of ſuch eſtate ſeyſed in fee, and the lande diſcendeth to his iſſue, and his iſſue entreth &c. in this caſe the mulier is without remedy, for he may not enter, nor he ſhall haue no action for to recouer the land, for this that it is an auncient lawe in ſuch caſe vſed. But it hath bin an opinion of ſome men, that, that ſhalbe vnderſtode where ꝑ father hath a ſonne a baſtarde by a woman, and after he weddeth the ſame woman, and after the eſpouſaile hee hath iſſue by ꝑ ſãe woman a ſonne or a daughter mulier, & the father dieth &c. If ſuch a baſtarde enter &c. and hath iſſue, and dyeth ſeyſed &c. Then ſhall the iſſue of ſuch a baſtarde

haue

haue the land clerely to him as it is afore ſayd &c. And not any other baſtarde borne of ỹ mother that was not eſpouſed to his father, and this is a good & reaſonable opinion. For ſuch a baſtarde borne before ỹ eſpouſels ſolẽpniſed betweene his father & his mother by the lawe of holy Church, is mulier, though that by the lawe of the lande he is a baſtard borne, and ſo he hath colour of entre as heire to his father, for this that he is by one lawe mulier, that is to ſay, by the law of holy church. But otherwiſe it is of a baſtarde that hath no manner of colour to enter as heire, in ſo much that hæ may not in no lawe be ſayd mulier &c. for ſuch a baſtarde is ſayde Quaſi nullius filius: But in ſuch caſe afore ſayde, where the baſtarde entreth after the death of his father, and the mulier putteth him out, & after ỹ baſtard diſſeiſeth the mulier, & hath iſſue, & dieth ſeiſed, and the iſſue entreth, then the mulier may haue a writ of Entre vpon diſſeiſin againſt the iſſue of the baſtarde, and recouer the lande &c. And ſo may ye ſee the diuerſitie where ſuch a baſtard continueth his poſſeſſion al his life without any interruption, and where the mulier entreth & interrupted the poſſeſſion of ſuch a baſtard.

¶ Alſo if a childe wỹin age haue title & cauſe to enter into any lands or tenements vpon another ỹ is ſeiſed in fee or in fee taile of ỹ ſame lãds or tenemẽts, if ſuch a mã ỹ is ſo ſeiſed dye

of

of ſuch eſtate, ſo ſeiſed and the tenements diſcend to his iſſue during the time ꝑ the child is within age, ſuch diſcent ſhall not toll the entre of the childe, but he may enter vpon the iſſue that is in by diſcent &c. for this that no laches ſhalbe adiudged in a childe within age in ſuch caſe &c.

¶ Alſo, if the huſband & his wife, as in right of the wife haue title and right to enter in the tenements that another hath in fee, or in fee tayle, & ſuch a tenant dieth ſeyſed &c. In ſuch caſe the entre of ꝑ huſband is taken away vpō ꝑ heire that is in by diſcent. But if ꝑ huſbande die, thē the wife may wel enter vpon the iſſue by diſcent, for this that the laches of the huſband ſhall not turne to the wife & to her heire in preiudice nor in damage in ſuch caſe, but ꝑ ꝑ wife & her heires may well enter where ſuch diſcent is during the couerture &c.

¶ Alſo, if a man that is not of whole minde, that is to ſay in latin, Qui non eſt compos mentis, hath cauſe to enter in any ſuch tenements if ſuch diſcent vt ſupra, be had in his life during the time that he was out of his minde, & after die, his heires may well enter vpon him that is in by diſcent. And in this may yee ſee a caſe ꝑ the heire may enter, & yet his auncеſter that had ꝑ ſame title may not enter, for he that was out of his minde at the time of ſuch diſcent, if he will enter after ſuch a diſcent, if actiō vpon this be ſued againſt him, he hath nothing for him to plede, or to helpe him, but ſay ꝑ he was

out

out of mind at the time of ſuch diſcent &c. And he ſhal not be receiued to ſay this, for this that no man of full age ſhalbe receiued in any plee by the law to diſalt or diſable his owne perſon. But the heire may well diſable the perſon of his auncеſtor for aduantage of the heire in ſuch caſe, for this, that the laches may be adiudged by the law in him that hath no diſcretion in ſuch caſe. And if ſuch a man out of his minde make a feoffement &c. he may not enter, ne haue a writ called Dum non fuit compos mentis &c. Cauſa qua ſupra. But after his death, his heire may wel enter, or haue the ſame writ, Dum non fuit compos mentis at his election &c.

¶ Alſo, if I be diſſeiſed by a child within age that alieneth to an other in fee, and the alienee dyeth ſeiſed, and the tenements diſcend to his heire, the child being within age, mine entre is taken away. But if the child within age enter vpon the heire that is in by diſcent, as hee wel may, for this that the diſcent was during his nonage, then I may wel enter vpon the diſſeiſor, for this, that by his entre he hath defeated & adnulled the diſcent.

¶ And in the ſame maner it is where I am ſeiſed, & the diſſeiſor maketh a feoffement in fee vpon condition &c. and the feoffee dyeth of ſuch eſtate ſeiſed &c. I may not enter vpon the heire of the feoffee: But if the condition be broken ſo that by ſuch cauſe the feoffor entreth vpon the heir, now may I wel enter, for this that when the feoffor or his heires enter for the condition broken,

broken, the discent is vtterly defeated.

¶ Also, if I be disseised, and the disseisor hath issue and entreth into Religion, by force of which the landes discend to his issue, in this case I may well enter vpon the issue, and yet there was a discent: But for this that such discent commeth to the issue by the fathers deede, that is to say, for this that he entred into religion &c. and his discent commeth not to to him by the deede of God, that is to say, by death &c. mine entrie is congeable and lawfull, for if I arraigne an Assise of Nouel disseisin against my disseisor, though that hee after enter into Religion, this shall not abate my writ: But my writ this notwithstanding, shal abide in his force and strength, and my recouerie against him shalbe good. By the same reason the discent that came to his issue by his owne deede may not put mee from mine entrie &c.

¶ Also, if I let to a man certaine landes for terme of xx. yeares, and an other disseiseth me, and putteth out the termor, and dyeth seysed, and the tenements discend vpon his heire, I may not enter, and yet the lessee for terme of yeares may well enter, for this that by hys entrie hee putteth not out the heire that is in by discent from the franktenement that vnto him discended, but onely claimeth to haue the tenements for terme of yeres, the which is no expulsing of the franktenement of the heire, that is in by discent: But otherwyse it is where my tenant for terme of lyfe is disseised &c.

&c. Causa qua supra &c.

Also, it is said that if a man bee seysed of tenemẽts in fee by occupation in time of warre, and dyeth thereof seysed in time of warre, and the tenements discend to his heire, such discent putteth out no man of his entrie. And of thys a man may see a plee in a writ of Ayel, Anno 7. Ed. 2.

Also, that no dying seysed (where all the tenements come to another by succession) shall take away the entrie of any person &c. For of Prelates, Abbots, Priors, Deanes, or Parsons of Churches &c. though that there were xx. successors, this putteth no man from his entrie &c. More shalbe said of Discents in the Chapiter of Continuall claime &c.

¶ Continuall claime.

COntinual claime is, where a man hath right and title to enter in any lands or tenements whereof an other is seised in fee, or in fee taile, if hee that hath title to enter make continuall claime to the lands and tenements, before the dying seised of him that holdeth the tenements: Then though such a tenant die thereof seysed, and the lands and tenements discend to his heire, yet may hee that hath made such claime, or his heires, enter into the lands and tenements discended, because of the continual claime made, notwithstanding such discent. As in case a man be disseised, and the disseisee maketh

maketh continuall claime to the tenementes in the life of the disseisor, though the disseisor die seysed in fee, and the land discendeth vnto his heyres, yet may the disseisee enter vpon the possession of the heyre, notwythstanding such discent.

¶ In the same maner it is, if tenant for terme of life alien in fee, he in the reuersion, or hee in the remainder may enter vpon the alienee. And if such alienee die seised of such estate without continual claime made to the tenements before the dying seised of the alienee, and the tenements because of the dying seised of the alienee discend vnto the heire of the alienee, then may not he in the reuersion, nor he in the remainder enter. But if he in the reuersion, or he in the remainder that hath cause to enter vpon the alienee, made continual claime to the tenements before the dying seised of the alienee, then such a man may enter after the death of the alienee, aswel as he might in his life &c.

¶ Also, if lands be lett vnto a man for terme of his life, the remainder vnto an other for terme of life, the remainder vnto the third in fee, if the tenant for terme of life alien to another in fee, and he in the remainder for terme of life maketh continual claime vnto the land before the dying seised of the alienee, and after the alienee dyeth &c. and after he in the remainder for term of life dieth before any entre made by him: In this case hee in the remainder in fee may enter vpon the heire of the alyenee, because

cause of continuall claime made by hym that had the remainder for terme of life, for this that such right that he hath to enter, shall go & remaine to him in the remainder after him, in so much that he in the remainder in fee may not enter vpon the alienee in fee during ỹ life of him in the remainder for terme of life, & because he might not make continual claim, for none may make continual claime but when he hath title to enter. But it is to be shewed to thee my child how and in what maner continual claime shal be made, and to learne this, three things there be to be vnderstood. The first thing is, if a man haue cause to enter in any lands or tenements in diuers townes within one Shire, if he enter in any parcel of the lands or tenemẽts that he in one towne, in the name of all the lands or tenementes to which hee hath right to enter within al the townes in the same shire, by such entre he hath as good possession & seisin of such landes or tenements whereof he hath title to enter, as if he had entred into euery parcel, and this seemeth great reason, for if a man will enfeffe another without deede, of certain lands or tenements that he hath in many townes within one shire, & he will deliuer seisin to the feffee of parcel of the tenements within one town in the name of all the lands & tenements that hee hath in the same town, & in al the other townes &c. all the said tenements &c. shal passe by force of the sayd liuerie of seisin to hym to whom such feffement in such maner is made. And yet

he to whom such liuerie of seisin is made, hath no right to all the lands & tenements in all the townes, but by reason of the liuerie of seysin made of parcel of the lands or tenemẽts in one town, a multo fortiori it seemeth good reason that when a man hath title to enter into landes or tenements in diuers townes within one shire before any entrie by him made, that by the entrie of him made in parcell of the tenements in one towne, in the name of all the lands & tenements to the which he hath title to enter with in the same shire, this is a seisin of all in him, & by such entre he hath possessiõ & seisin in deede, as if he had entred into euery parcel &c.

¶ The second is to vnderstand, that if a man hath title to enter into any lands or tenemẽts, if he dare not enter into the same landes or tenements, nor in any parcel thereof for doubt of beating, or for doubt of mayming, or for doubt of both, if he go & approch as nigh the tenemẽts as he dare for such doubt, & claime by wordes the tenements to be his, incontinent by such claime he hath a possession & seisin in the tenemẽts, aswel as if he had entred in deede, though hee had neuer possession or seisin of the same lands or tenements before the said claim. And that the law is such, it is wel proued by a plee of an Assise in the Booke of Assises, Anno 38. E. 3. The tenor of which insueth in this forme.

¶ In the Countie of Dorset before the Iustices it was found by verdict of Assise, that the plaintife whych had right by discent of

heri-

heritage, to haue the tenements put in plaint at the time of the death of his auncestor, which was dwelling in the towne where the tenements were, & by word claimeth the tenemēts among his neyghbors, but for doubt of death he durst not approche vnto the tenements, but bringeth an Assise, and vpon the matter found, it was awarded that he should recouer.

¶ The third thing is, to vnderstand wythin what time, and by what time the claime that is said continual claime shal serue & help him that made the claime & his heire. And as to this it is to wit, that he that hath title to enter, when he will make his claime, if he dare approch vnto the lande, then it behoueth hym to go vnto the land, or to parcel of it, and make his claim. And if he dare not approch vnto the land for dread of beating, maiming, or death, then it behoueth him to go & to approch as nigh as he dare toward the land, or parcel thereof, & make his claime. And if his aduersary that occupieth the land die seised in fee, or in fee taile, wtin a yere & a day after such claime made, by which the tenements discend vnto his sonne, as heire vnto him, yet may he that made ỹ claime, enter vpon the possession of the heires. But in this case after the yeare & the day that such claime was made, if none other claim be made, if the father then die seised the morrow after the yere & the day, or at another day after &c. then may not he that made ỹ claim enter. And therfore if he that made the claime will be sure alway ỹ his entre

shal not be taken away by such discent, it behoueth him that within the yeare & the day after the first claime, to make an other claime, in the forme aforesaid. And within the yeare and the day after the second claime, to make the third claime in the same maner, and within the yere and the day after the third claime, to make an other claime &c. that is to say, to make an other claime within euery yere & day next after euery claime made during the life of his aduersarie, and then at what time that his aduersarie die, his entrie shall not be taken away by discent. And such claime made in such maner is most commonly taken & called continuall claime of him that made the claime. But yet in case aforesaid, where his aduersary dieth within the yere & the day next after the first claime, this is in the law a continual claime, in somuch that his aduersarie died win the yere & ỳ day after ỳ same claim, for it is no neede for him that made the claim, to make any other claim, but at what time that he wil win the same yere & ỳ day &c.

¶ Also if his aduersarie be disseised within the yere & day after the claime, & the disseisor dieth thereof seised within the yere & the day &c. This dying seised shall not hurt him that made the claime, but that he may enter &c. For whosoeuer he be that dyed seised within ỳ yere & the day after such claime, that shall not hurt him that made the claime, but that he may enter though there were many dyinges seised, & many discents within the yere & the day &c.

¶ Also

¶ Also if a man be disseised, & the disseisor die seised within the yere & the day next after the disseisin done, whereby the tenements discende to his heire, in this case the entre of ꝑ disseisee is taken away, for ꝑ yere & the day that should helpe the disseisee in such case &c. shal not be taken from the time of the title of entre growen vnto him, but only from ꝑ time of the claim by him made in time afore said, & for ꝑ cause it shall be good for such a disseisee for to make his claim &c. in as short time as he may after ꝑ diss. &c.

¶ Also, if such a disseisor occupy the lande by xl. yeres without any claime made by the disseisee &c. & the disseisee by little space before the death of the disseisor make claime in the forme afore said, if so it fortune that within a yere & a day after such claime the disseisor dye seysed &c. the entre of the disseisee is congeable, & for this it shalbe good for such a man that made no claime that hath title to enter &c. when hee heareth that his aduersarie lyeth sicke to make his claime &c.

¶ Also, as it is said in the cases put before, where a man hath tytle to enter because of a disseisin &c. The same lawe is where a man hath right to enter because of the title &c.

¶ Also in the said Presidents may ye know my childe two thinges. One is where a man hath title to enter vpon any tenant in taile, if he make any such claime vnto the land &c. then is the state of the taile defeated, for ꝑ claime is as an entre made by him, & is of the same ef-

fect in the law, as if he were vpon the same tenements, & had entred in the same tenements, as is aforesaid. And then when the tenant in taile immediatly after such claime continueth his occupation in the tenements, this is a disseisin made of the same tenementes vnto him that made the claim, Et sic per consequens, the tenant then hath fee simple &c.

¶ The seconde thing is, ỹ as oft as he ỹ hath right to enter maketh such claime, & this notwithstanding his aduersary cõtinueth his occupation &c. so oft ỹ aduersary doth wrong & disseisin to him that made the claime. And for this cause so oft may hee that made the same claime for euery such wrong and disseisin made vnto him, haue a writ of trespas, Quare clausum suum fregit &c. to recouer his damages &c. Or he may haue a writ vpon the statute of king Richard the second, made the v. yere of his raigne supposing by his writ, ỹ his aduersary hath entred into the lands or tenemẽts of him that made ỹ claime, where his entre was not giuen by the law &c. & by such action he shall recouer his damages &c. And if the case be such, ỹ the aduersarie occupy the tenements with force & armes, or with a multitude of people at ỹ time of such claime &c. Then may he that made the claime, for euery such time haue a writ of forcible entre & recouer his treble damages.

¶ Also here it is to see if the seruant of a man that hath title of entre, may by the commaundement of his Master make continuall claime

for

for his Master in his name, & it seemeth that in some cases he might do this, for if hee by his commaundement come to any parcel of the lād & there maketh claime &c. in the name of his Master, this claime is good for his Master, for this that he hath done al that it behoueth his Master to do in such case &c.

¶ Also if a Master say vnto his seruant ẏ he dare not go into the land nor into any parcell of the lād for to make his claime &c. & dare not approch more nigh vnto the same land, saue to such a place called Dale, & commaundeth his seruāt to go to the same place of Dale, & there to make a claime for him &c. if the seruant do &c. this seemeth as good claime for his master, as if he had bene there in his owne person, for that the seruant did all that his Master durst do, & ought to do by the law in such case.

¶ Also, if a man be so sicke or so lame that hee may not in any maner come to the land, nor to any parcell of the same, or if there bee a recluse that he may not because of his order go out of his house &c. if such a maner of person cōmaūd his seruant to go and make claime for him &c. and the seruant dare not go to the lande, nor to any parcell thereof for doubt of beating, mayme, or death, and for that cause such seruant commeth as nigh to the land as he dare for such dread, and maketh his clayme &c. for his master, it seemeth that such claime for his master is good and strong in law, for els his master should be in two great mischiefe, for

it may wel be that such a person that is sicke, or lame, or recluse, cannot finde any seruaunt that dare go vnto the lande, nor to any parcell of it to make the claime for him &c. But if the Master of such a seruant be in good health, and may and dare wel go to the tenementes, or to parcel of it to make his claime for him &c. if such a Master cõmaunde his seruant to goe to some parcel of the land & make claime for him &c. And when the seruant is in going to do the cõmaundement of his master, he heareth by the way such thinges that he dare not go to any parcell of the lande for to make any claime for his Master, and for that cause he goeth as nigh vnto the land as he dare for doubt of death, & there he maketh claime for his Master in the name of his master &c. It seemeth ỹ the doubt in the law in such case shalbe if such claime auaile his master or not, for this ỹ the seruant did not all that his master at the time of commaundement durst to haue done.

¶ Also some haue saide, that where a man is in prison & is disseised, and the disseisour dyeth seised, during the time that the disseisee is in prison, by which tenements discended to ỹ heir of the disseisour, they haue sayd that this shal not hurt the disseisee that is in prison, but that he may wel enter notwithstanding such discent, for this that he may not make continual claim when he was in prison. And also if such a one that is in prison bee outlawed in an action of dette or Trespas, or in appeal of robbery &c.

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he shal reuerse such outlawry by writ of Error &c. because he was in prison at the time of the outlawry against him pronounced.

¶ Also if a recouery be had by discent against such a one that is in prison, he shall auoide the iudgement by a writ of Error, for this that he was in prison at the time of such default made &c. & because that such matters of record shall not hurt them that be in prisō, but that it shal be reuersed &c. a multo forciori It seemeth that a matter in deede, ý is to say, such discent had when he was in prison shall not hurt him &c. specially for this that he may not go out of prison to make continual claime &c.

¶ And in the same maner it seemeth to them where a man is out of the realme in the kings seruices for busines of the realme, & if a man be disseised when he is in the seruice of the king, that such discēt shal not hurt the disseisee, but for this ý he might not make continnal claime &c. it seemeth vnto them, that when he cōmeth againe into England, he may enter again vpon the heire of the disseisor &c. For such a mā shal reuerse an outlawrie that is pronounced against him during the time that he is in seruice &c. Ergo a multo forciori he shall haue aide by the law in the other case &c.

¶ Also others haue said, that if a man be out of the Realme, though he be not in the kinges seruice, if such a man being out of the Realme be disseised of landes or tenements within the realme, and the disseisour dye seised &c. the disseisee

leiſee being out of the Realme, it ſeemeth vnto them, that when the diſſeiſee cõmeth into the Realme, that he may wel enter vpon the heire of the diſſeiſour &c. & this ſeemeth vnto them for two cauſes.

¶ One is, ỹ he that is out of the Realme, may not haue knowledge of the diſſeiſin made vnto him by vnderſtanding of the law, no more then that a thing done out of the realme may be tried within this Realme by the othe of xij. men & to cõpel ſuch a man to make cõtinual claime which by the vnderſtãding of the law cã haue no knowledge or cogniſaunce of ſuch diſſeiſin made or done, this ſhalbe inconuenient, namely when ſuch a diſſeiſin is done vnto him, when he was out of the realme. And ỹ dying ſeiſed was done when he was out of the realme, for in ſuch caſe he may not by poſſibility after the cõmon preſumption make no cõtinuall claime, but otherwiſe it ſhalbe if the diſſeiſee were within the realme at the time of the diſſeiſin, or at ỹ time of the dying ſeiſed of the diſſeiſor &c. Another matter they alleadge for a proofe, that before the ſtatute of king Ed. the 3. made the 34. yere of his raigne, by which ſtatute non claime is out &c. the lawe was ſuch, that if a fine were leuyed of certein lands or tenements, if any that was a ſtraunger to ỹ fine had right to haue and to recouer the ſame lands or tenements, if he came not & made his claime therof within a yere and a day next after the fine leuied, he ſhalbe barred for euer, Quia dicebat finis quod

quod finem litibus imponebat. And that the lawe was such, it is proued by the statute of West. the seconde, De donis condicionalibus, where it speaketh, if the fine be leuyed of tenements giuen in the tail &c. Quod finis ipso iure sit nullus, nec habeant here des, aut illi ad quos spectat reuersio) licet plene ætatis fuerint in Anglia & extra prisonam) necesse apponere clameū suum. So it is proued that if a straunger that hath right into the tenements, if he were out of the realme at the time of the fine leuied &c. shall haue no damage though that such fine was matter of recorde: by greater reason it seemeth vnto them that a disseisin & discent ꝑ is matter in deede, shall not so greeue him that was disseised when he was out of ꝑ realme at the time of the disseisin, and also at the time ꝑ the disseysor dyed seised &c. but ꝑ he may wel enter notwithstanding such discent. Also enquire if a mā be disseised, & he arraine an assise against the disseisor, & the recognitors of the assise challenge for the plaintif, & the Iustices of assise wilbee aduised of their iudgements vntill the next assise &c. and in the meane season the disseisor dyeth seysed &c. yet the said suit of the Assise shalbe taken in lawe for the disseisee a continuall claime, in so much that no default was in him &c.

¶ Also enquire if an Abbot of a Monasterie dye, & during the time of vacatiō, a mā wrongfully entreth in certein parcels of lande of the Monasterie, clayming the lande vnto him and his heires, and of that estate dyeth seysed, and the

the lande discended vnto his heires, and after that an Abbot is chosen, & made Abbot of the Monasterie, a question is if the abbot may enter vpon ẏ heir or not. And it seemeth to some that the Abbot may well enter in this case, for this that the Couent in time of vacation was no person able to make continual claime, for no more then they be personable to sue an action, no more bee they personable to make contynuall claime, for the couent is but a dead bodie wout head, for in time of vacation a grāt made vnto them is void, & in this case an abbot may not haue a writ of Entre vpō disseisin against the heir, for this ẏ he was neuer disseised. And if the abbot may not enter in this case, then he shalbe put vnto his writ of ryght, the which shalbe to hard for the house, by which it seemeth to thē that the Abbot may well enter &c.

Quære de dubijs, legem bene discere si vis,
Quærere dat sapere que sunt legitima vere.

¶Releases.

RElēases be in diuers maners, that is to say release of right that a man hath in lands or tenements, and release of actions reals & personals, and of other thinges, ¶Release of all the right that a man hath in landes or tenementes &c. is commonly made in such forme, or to such effect. Nouerint vniuersi per pīentes me A. de B. remisisse, relaxasse, & omnino de me & heredibus meis quiet clamasse E. de D. totū ius, titulū, & clameū q̄ habui, habeo, vel quouismodo in futur̄ haber̄ potero,

potero, de, & in vno meſuagio cum pertinentijs in P. And it is to be vnderſtood, that theſe wordes (Remiſiſſe, & quiet clamaſſe) be of ſuch effect, as theſe wordes, Relaxaſſe &c. And alſo theſe wordes which be commonly put in ſuch deedes of releaſes &c. that is to be vnderſtood, Que quouiſmodo in futurum habere potero, be as wordes void in the law, for no right paſſeth by a releas but the right that the leſſor hath at the time of his releaſe made: For if it be father and ſonne, and the father be diſſeiſed, & the ſonne lyuing, his father releaſeth by his deede to the diſſeiſor all the right that he hath or may haue in the ſame tenements, without clauſe of warrantiſe &c. & after the father dieth, the ſonne may lawfully enter vpon the poſſeſſion of the diſſeiſor, for this that he had no right in the land lyuing his father, but the right diſcended vnto him by diſcent after the releaſe made by the death of his father. Alſo in a releaſe of al the right that a man hath in certaine lands, it behoueth vnto him to whom the releaſe is made in ſuch caſe, yᵗ he hath a freehold in the lands in deede or in the law, at the time of the releas made, for in euery caſe where he to whom yᵗ releaſe is made hath a freehold in deede or in law at the time of the releaſe made &c. the releaſe is good. Frankteneſment in law is, as if a man haue diſſeiſed another, & thereof died ſeiſed, by the which the teneſments diſcend vnto his ſonne, howbeit that his ſonn enter not in the teneſmēts, yet he hath a frankteneſment in the law, which by force of

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the diſcent is caſt vpon him, and therefore the releaſe made is good ynough. And if hee take a wife ſo being ſeiſed in the law, howbeit that he neuer enter in deede, and dieth, his wife ſhal haue thereof her dower. And in ſuch caſe of releaſe of all his right, howbeit that he to whom the releaſe is made, ne hath any thing in the franktenement, neither in deede nor in law, yet the releaſe is good ynough: As if the diſſeiſor haue left lād that he had by diſſeiſin to another for term of his life, ſauing the reuerſion to him, if the diſſeiſee or his heires releas vnto the diſſeiſor all the right &c. that releas is good, for that that he to whom the releaſe is made, had in him a reuerſion at the time of ỹ releas made.

¶ In the ſame maner, if a leaſe be made to a man for terme of life, the remainder vnto another for terme of life, the remainder vnto the third in tatle, the remainder vnto the fowerth in fee, if a ſtranger that hath the right vnto the land, releas all his right vnto any of them in the remainder, ſuch releas is good, for this that euery of them hath a remainder veſted in hym ſelf, yet if the tenāt for term of life be diſſeiſed, & after he that hath right (the poſſeſſion being in the diſſeiſor) releas vnto one of thē to whom the remainder was made, all his right &c. that releaſe is void, for that that he ne had in him no remainder in deede, but al onely a right of a remainder at the time of the releaſe made.

¶ And note, that euery releaſe made to him that hath a reuerſion or remainder in deede, ſhal

ſerue

ſeruie and helpe them that haue the franktene-
ment, as well to them to whom the releaſe is
made, if the tenāt haue ꝑ releas in his hand &c.

¶ In the ſame maner a releas made to a tenāt
for terme of life, or to a tenant in the taile, ſhal
enure vnto them in the reuerſion, or to them in
the remainder, as well as to the tenant of the
franktenement, and ſhall haue a great aduan-
tage of that, if that they may ſhew it.

¶ And if there be Lord and tenāt, & the tenant
is diſſeiſed, and the diſſeiſee releaſeth vnto the
diſſeiſor all the right that he hath in the ſeig-
niorie, or in the land, that releas is good, & the
ſeigniorie is extinct. And if the goods of ꝑ diſ-
ſeiſee be taken, & of them the diſſeiſee ſueth a
Replegiare againſt the Lord, he ſhal compell the
Lord to auow vnto him, & if he wil auow vpon
the diſſeiſor, then vpon the matter ſhewed, the
auowrie ſhalbe abated, for the diſſeiſee is te-
nant to them in right and in law.

¶ Alſo if land be gyuen to a man in the taile,
reſeruing vnto the donor & his heires a certain
rent, if the donee be diſſeiſed, and after the donor
releaſeth to the donee all the right that he hath
in the land, & after the donee entreth into the
land vpon the diſſeiſor: In this caſe the rent is
gon, for this that the diſſeiſee at the time of the
releaſe made was tenāt in right, & in law vnto
the donor, & the auowrie of fine force ought to
be made vpon him by the donor for the rent be-
hind &c. But yet nothing of the right of ꝑ lād,
ꝑ is to ſay, of the reuerſion ſhal paſſe by ſuch re-

leaſe.

leaſe, for this that the donee to whom the releaſe was made then had nothing in the land, but onely a right, and ſo the right of the land may not paſſe by ſuch releaſe of the donee.

¶ In the ſame maner it is, if a leaſe bee made to one for terme of life, reſeruing to the leſſor and to his heirrs certaine rent, if the leſſee bee diſſeiſed, and after the leſſor releaſeth to the leſſee and to his heires, and after the leſſee entreth, howbeit that in the caſe the rent is extinct, yet nothing of the right paſſeth &c. Cauſa qua ſupra. But if it be verie Lord and verie tenant, and the tenant maketh a feffement in fee, the which feoffee neuer became tenant to the Lord &c. if the Lord releaſe to the feoffor all his right &c. that releaſe is voide, for this that the feoffor hath no right in the land, and hee is no tenant in right to the Lord, but onely tenant as for the auowrie to be made, and he ſhal neuer compell the Lord to auow vpon him, for the Lord may auow vpon the feoffee if he will. Otherwiſe it is where the verie tenant is diſſeiſed, as in caſe aforeſaid, for if the verie tenant that is diſſeiſed holdeth of the Lord by knights ſeruice and dyeth, his heires beeing within age, the Lord ſhall haue and ſeyſe the ward of the heire. And ſo he ſhal not haue the ward of the feoffor that made the feoffement in fee, and ſo it is a great diuerſitie betweene theſe two caſes.

¶ Alſo if a man infeoffe another in hys lande vpon truſt, and to the intent that hee

ſhall

ſhall perfourme his laſt will, and the feoffour occupyeth the ſame at the will of his feoffees, and after the feoffees releaſe by their deede vnto the feoffour all the right &c. This hath been in queſtion if ſuch releaſe bee good or not, and ſome haue ſayde that ſuch releaſe is good, for this that no priuitie was betweene the feoffees and their feoffour, in ſo much that no leaſe was made after ſuch feoffement by the feoffees to their feoffour to holde at their will &c. and ſome haue ſaide the contrarie, & ỳ for two cauſes. One is, ỳ when ſuch feoffements are made vppon confidence, to perfourme the will of the feoffor, that it ſhall be vnderſtood by the law ỳ the feoffour by & by ought to occupy the lande at the will of his feoffees, & ſo it is ſuch maner of priuity betweene thẽ, as if a man make a feoffemẽt to another perſon, & they incõtinẽt vpõ the feoffement will ſay and graunt that the feoffor ſhall occupy the land at their will &c. An other cauſe they alledge, that if ſuch lande bee worth xl.s. by yeare &c. Then ſuch a feoffour ſhall be ſworne in aſſiſes & in other inqueſtes, in pleas reals and alſo in pleas perſoneles, of what great ſummes ſoeuer that the pleintifes will declare &c. And this is by the cõmon law of the lande. Ergo this is for a great cauſe, and the cauſe is that the lawe will that ſuch feoffours and their heires ought to occupie &c. And to take thereof the rent & all the profits, and all manner of iſſues and reuenues &c. as though the tenementes were their owne

without interruption of feoffees, notwithſtā-ding ſuch feoffementes. Ergo the ſame law gi-ueth a priuitie betwene ſuch feoffours, & their feoffees vpon confidence &c. For which cauſes they haue ſaide that the releaſe made by ſuche feoffees vpō cōfidence to the feoffour, or to his heires &c. ſo occupying the land &c. ſhalbe good ynough &c. And this is the better opinion as it ſeemeth. Alſo releaſes after ỹ matter in deed ſometime haue their effect by force to enlarge the eſtate of them, to whome the releaſe is made, As if I let certaine lande to a man for terme of yeares, by force whereof he is poſſeſ-ſed, and I releaſe vnto him all the right that I haue in the lande without more wordes ſet or put in the deede, and deliuer vnto him the deede: Then he hath eſtate but for terme of his life, and the cauſe is for this, that when the reuerſion or the remainder is in a man the which will enlarge by his releaſe the eſtate of the tenant &c. he ſhall haue no greater eſtate, but in the maner and fourme, as if ſuch a leſ-ſour were ſeyſed in fee, and will by his deede make eſtate to one in a certaine fourme &c. and deliuer vnto him ſeyſin by force of the ſame deede, if in ſuch deede of feoffement there be no worde of inheritaunce &c. Then he hath eſ-tate but for terme of life &c. and ſo it is in ſuch releaſe made by him in the reuerſion, or in the remainder: for if I let lande to a manne for terme of life, and after I releaſe vnto him all my right without more ſayinge in the re-

leaſe

leaſe, his eſtate is not enlarged. But if I releaſe vnto him & to his heires of his body engendred, then he hath fee tayle, and if I releas vnto him & to his heires, then hath he fee ſimple. So it behoueth in ſuch caſe to ſpecifie in ỹ deede, what eſtate he to whom the releaſe is made ſhall haue &c. And ſometime releaſe ſhall enure to let & put ỹ right of him that maketh the releaſe to him to whō the releaſe is made, As a man is diſſeyſed & he releaſeth vnto the diſſeiſour al ỹ right that he hath. In this caſe the diſſeiſor hath his right, ſo that where his eſtate before was wrong, nowe by the releaſe it is lawfull & right: but note wel that whē a man is ſeyſed in fee ſimple of any landes or tenementes, and another will releaſe vnto him al the right that he hath in the ſame tenementes, it needeth not to ſpeake of the heires of him to whom the releaſe is made, for this that he had fee ſimple at the time of the releaſe made: for if the releaſe were made to him and to his heires for one day, or for one howr, this ſhall be as ſtrong vnto him in the lawe, as hee had releaſed to him and to his heires, for when his right was gone from him at one time by his releaſe without any condition &c. to him that had fee ſimple, it is gone for euer. But where a mā hath a reuerſion, or a remainder, in fee ſimple at the time of ỹ releaſe made, there if hee will releaſe to the tenaunt for terme of yeares, or for terme of life, or in the tayle, it behoueth to determine the eſtate

that he to whom the releaſe is made ſhall haue by force of ỹ ſame releaſe. For this that ſuche releaſe goeth to enlarge the eſtate &c. of him to whō the releaſe is made. But otherwiſe it is where a man hath but a right vnto the land & had nothing in the reuerſion nor in ỹ remainder in dæde. For if ſuch a man releaſe all his right to one that is tenāt of the franktenemēt, al his right is gone, though that no mentiō be made of the heires of him to whō ỹ releaſe is made. For if I let land to a man for terme of life, if I after releaſe vnto him for to enlarge his eſtate, either it behoueth that I releas vnto him & to his heires of his body engēdred, or to him and to his heires males of his bodie begotten or by ſuch ſemblable eſtate &c. or otherwiſe he hath no gretet eſtate thē he had before. But if my tenant for terme of life let the ſame lād out to an other for terme of the life of his leſſee, the remainder to an other in fee, nowe if I releaſe vnto him vnto whom my tenant letted for terme of life, I ſhall be barred for euer, though that no mention be made of his heires, for this that at the time of the releaſe made I had no reuerſion but onely a right to haue the reuerſion. For by ſuch a leaſe with a remainder ouer that my tenant made, in this caſe my reuerſion is diſcontinued & ſuch a releaſe ſhall enure vnto him in ỹ remainder to haue aduantage of this, as well as to the tenaunt for terme of life, for to that entent the tenaunt for terme of life and he in the remainder be as one

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tenant in the law, and be as if one tenant were ſole ſeiſed in his demeane as of fee at the time of ſuche releaſe made vnto him. Alſo if a man be diſſeiſed by two, if he releaſe vnto one of thē, he ſhal hold his fellow out of the land and by ſuch releaſe ſhall haue ſole poſſeſſiō & eſtate in the land. But if one diſſeiſour enfeoffe two in fee, & the diſſeiſe releaſe to one of them, this ſhall enure to both the ſaid feffees. And ỹ cauſe of the diuerſitie betweene theſe two caſes, is apparant ynough.

¶ Alſo, if I be diſſeiſed, & the diſſeiſor is diſſeiſed if I releaſe to the diſſeiſor of my diſſeyſor, I ſhall neuer haue aſſiſe nor enter vppon his diſſeiſour, for this that his diſſeiſour hath my right by my releaſe &c. And ſo it ſeemeth in this caſe that if there were twenty diſſeyſors eche after other, & I releaſe to the laſt diſſeyſor, he ſhall barre all the other of their actions, and their title. And the cauſe is as it ſeemeth, for this that in many caſes when a man hath a lawfull title to enter, though he enter not &c. he ſhall defeate all meane titles by his releaſe &c. But this is not in euery caſe as ſhalbe ſaid afterwarde.

¶ Alſo, if a man be diſſeyſed the which hath a ſonne within age, & dieth and being the ſonne within age, the diſſeiſor dieth ſeiſed, & the land diſcendeth to the heire, and a ſtraunger abateth and after the ſonne of the diſſeiſee when he cōmeth vnto full age releaſeth all his right &c. to the abatour. In this caſe ỹ heire of the diſſeyſour

ſhall haue no aſſiſe of mortdācester against ꝯ abator, but he ſhalbe barred of ꝯ aſſiſe, for this ꝯ the abator hath ꝯ right of ꝯ ſome of the diſſeiſee by his releas, & the entre of ꝯ ſon was lawful &c. for this ꝯ he was vnder age at ꝯ time of ꝯ diſcent &c. But if a mā be diſſeiſed, & the diſſeiſour maketh a feffemēt vpon a cōdic̄, ꝯ is to ſay, to yeeld vnto him certein rent, & for default of paimēt a reentre &c. if ꝯ diſſeiſee releas to ꝯ feffee vpō cōdic̄, yet this amendeth not ꝯ eſtate of ꝯ feffee vpon cōdition, for notwithſtanding ſuch releaſe, yet his eſtate is vpō condition as it was before. In the ſame manner it is where a man is diſſeiſed of certaine lande, and the diſſeiſour graunteth a rent charge out of the ſame lande, though that after the diſſeiſee releaſeth vnto the diſſeiſour &c. yet the rent charge abideth in his force. And the cauſe is in theſe two caſes, ꝯ a mā ſhall haue none aduantage by ſuch releaſe that ſhall be againſt his owne proper acceptāce, & againſt his owen grant. And though ꝯ ſome haue ſaide that where ꝯ entre of a man is congeable vpon a tenant, if he releaſe to the ſame tenant, that this auaileth vnto ꝯ tenant ſo as if he had entred vpon the tenaunt & after enfeoffed him &c. this is not true in euery caſe, for in the firſt caſe of theſe two caſes if the diſſeiſee in fee enter vpon the feoffee vpon condition, & after enfeoffeth him, then the condition is all put aſide and voide. And in the ſeconde caſe if the diſſeiſee enter & enfeffee him ꝯ granted the rent charge, then is the rent charge auoided.

noided. But it is not auoided by any ſuch releaſe with an entre made &c. Alſo if a man be diſſeiſed by a child within age ẏ which alieneth in fee, & the alienee dieth ſeiſed, & his heire entreth (being ẏ diſſeiſor within age) Now it is in the election of ẏ diſſeiſor to haue a writ of Dum fuit infra etatē, or a writ of right againſt ẏ heire of the alienee, and which writ ſoeuer he taketh of thē, he ought to recouer by the law. And alſo he may enter into the land without any recouery, & in this caſe the entre of the diſſeiſee is taken away, but in this caſe if the diſſeiſee releaſe his right to the heire of the alienee & after ẏ diſſeiſor bringeth a writ of right againſt the heire of the alienee, and he ioyneth the miſe vpon the clere right &c. the graūde aſſiſe ought by the lawe to finde that the tenant hath more clere right &c. then hath the diſſeyſour, for this that the tenant hath the right of the diſſeyſee, and his releaſe, which is more auncient and more cleare right then the right of the diſſeyſor, for by ſuch releaſe, all the right of the diſſeiſee paſſeth vnto the tenant, & is in the tenāt. And to this cōe haue ſaid, ẏ in ſuch caſe where a man hath right to lands or tenemēts (but his entre is not lawfull) if he releaſe vnto ẏ tenāt &c. Then ſuch releaſe ſhall enure by way of extinguiſhmēt. And vnto this it may be laide, ẏ this is trueth vnto him that releaſeth, for by his releaſe he hath diſmiſſed himſelfe cleane of his right as to his pſon. But yet the right ẏ he had may wel paſſe & go vnto ẏ tenāt by his

releaſe, for it ſhould be inconuenient ꝑ ſuch an auncient right ſhould be extinct all vtterly &c. for it is cõmonly ſaid ꝑ right may not die. But a releaſe ꝑ goeth by the way of extinguiſhmẽt againſt al ꝑſons, is wher he to whõ ꝑ releas is made, may not haue this that vnto him is releaſed. As if therebe lord & tenant, & the lorde releaſeth vnto the tenant all the right that hee hath in the lordſhip, or all the right ꝑ he hath in ꝑ lãd &c. ſuch a releaſe goeth by waye of extinguiſhment againſt all perſons, for this that the tenant may not haue the ſame of himſelfe. In ꝑ ſãe maner is a releaſe made to the tenant of the land of a rent charge, or of a cõmon paſture, for it is ꝑ the tenãt may not haue ꝑ, that vnto him is releaſed &c. So ſuch releaſes goe away by extinguiſhment againſt all perſons.

¶ Alſo, to ꝓue ꝑ the graund aſſiſe ought to paſſe for the demaundant in the caſe afore ſaid, I haue heard often in the lecture vpon the ſtatute of Weſtm̃ the ſeconde that beginneth. In caſu quando vir amiſerit per defaltam tenementum quod fuit ius vxoris ſue &c. that at the common lawe before that ſtatute, if a leaſe were made to a tenant for terme of life, the remainder ouer in fee, and a ſtranger by a fained actiõ recouer againſt the tenãt for terme of life by defaut, & after the tenãt dieth, he in the remainder had no remedy before the ſtatute, for this, that he had no poſſeſſion of ꝑ land, but if he in the remainder had entred vpon the tenant for terme of life, and diſſeyſed him, and after the

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tenant entreth vpon him, and after the tenant for terme of life leeſeth by ſuche recouerie had by default, and dyeth: now he in the remainder may wel haue a writ of right againſt him that recouered, for this that the miſe ſhal be ioyned only vpon the clere right. And yet in this caſe the ſeiſin of him in ỹ remainder was defeated by the entre of ỹ tenant for terme of life. But peraduẽture ſome wil argue & ſay, that he ſhal haue no writ of right in this caſe, for this that when the miſe is ioyned in ſuch maner, that is to ſay, if the tenãt haue more clere right to the land in the maner as it is holden, then the demandant hath in the maner as he demaundeth, And for this that the ſeyſin of the demaundãt was defeated by the entre of the tenaunt for terme of life, then he hath no right in the maner as he demaundeth. Vnto this it may bee ſayde that theſe wordes (Modo & forma prout &c.) in many caſes be wordes of the maner of pleading, and no wordes of ſubſtaunce. For if a man bring a writ of entre (In caſu prouiſo) of alienation made by ỹ tenãt in dower to his diſenheritãce, & pleadeth of the alienation made in fee, & the tenant ſaith that he aliened not in the maner as the demaundant hath declared, & vpon this they bee at iſſue, and it is found by verdict ỹ the tenant aliened in the tayle, or for terme of an others life, the demaũdant ſhall recouer, & yet the alienation was not in the maner as the demaundant hath declared.

¶ Alſo, if there be Lorde and tenant, and the tenant

tenant holdeth of ỹ Lorde by fealty onely, and the lord diſtraineth ỹ tenāt for rēt, & the tenāt bringeth a writ of treſpas againſt his lord for his cattel ſo take, & ỹ lord pleadeth ỹ ỹ tenant holdeth of him by fealty & certaine rent, & for the rēt behind he came to diſtraine &c. And demaūdeth iudgement of ỹ writ brought againſt him, Quare vi & armis &c. And ỹ other ſaieth ỹ he holdeth not of him in the manner as he ſuppoſeth, & vpon this they be now at iſſue, & it is found by verdict that he holdeth of him by fealty tantum. In this caſe ỹ writ ſhall abate, & yet he held not of the lorde in the maner as ỹ Lorde had ſayde, for the matter of the iſſue is, whether ỹ tenant holdeth of him or not. For if he hold of him, though the Lord diſtraine for other ſeruices that he ought not to haue, yet ſuch a writ of treſpas Quare vi & armis &c. lieth not againſt the lord but ſhall abate.

¶ Alſo, in a writ of treſpas of beating, or of goods taken, if the defendant plede not culpable in the maner as the plaintife ſuppoſeth, & it is founde that the defendant is culpable in an other towne, or at an other daye then the plaintife ſuppoſeth, yet he ſhall recouer. And in many mo other caſes theſe wordes, that is to ſay, in the maner as the demaundant or the pleintife hath ſuppoſed, bee no matter of ſubſtance of the iſſue, for in a writ of right where the miſe is ioined vpon the clere right, it is as much to ſay and to ſuch effect, that is to witt, whether hath the more right, the tenaunt or

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the demaundant to the thing ſo demaunded &c.
¶ Alſo, if a man be diſſeiſed and the diſſeiſour dyeth ſeiſed &c. and his ſonne entreth by diſcent, and the diſſeiſee entreth vppon the heire of the diſſeiſour, the which entre is a diſſeiſin &c. if ỹ heire bring an aſſiſe or a writt of right againſt the diſſeiſee, he ſhalbe barred. For this that when the graunde aſſiſe is ſworne, their othe is vppon the clere right, and not vpon the poſſeſſion &c. for if the heire of the diſſeiſor had brought an aſſiſe of nouel diſſeiſ. or a writ of entre in nature of aſſiſe, & recouered againſt ỹ diſſeiſee, & ſued execution, yet may the diſſeiſee haue a writ of entre in the Per againſt him of the diſſeiſin made vnto him by his father, or he may haue againſt the heire a writ of right, But if the heire ought to recouer againſt the diſſeiſee in ỹ caſe aforeſaide by a writ of right, then all his right ſhalbe clearely gone, for this ỹ a finall iudgement ſhoulde bee giuen againſt him, which ſhould be againſt reaſon where the diſſeiſee hath more clere right &c. And knowe ye my ſonne, that in a writ of right after this that the fower knights be choſen in ỹ graund aſſiſe, then there is no greater delaye then in a writ of Formedon after this ỹ the parties be at an iſſue, &c. and if the miſe be ioyned vpon battaile, then there is leſſe delay.
¶ Alſo, a releaſe of al ỹ right &c. in ſome caſe is good made vnto him that is ſuppoſed tenaunt in the lawe though he haue nothing in the tenementes, as in a Præcipe quod reddat,

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if the tenāt alien the land hanging the writ, & after ẏ demandant releaſeth to hī al his right, that releaſe is good, for this that hee is ſuppoſed to be tenaunt by the ſuit of ẏ demandant, & yet he hath nothing in the lande at the time of the releaſe made. In ẏ ſame manner it is if in a Præcipe quod reddat the tenaunt vouche, & the vouchee enter into the garraunty, if after the demaundant releas to the vouchee all his right &c. this is good ynough, for this ẏ the vouchee after this that he hath entred into the garrantie is tenant in law to the demaundant.

¶ Alſo, as to releaſes of actions reals & actions perſonels, it is ſo that ſome actions be mixt in the realtie and in the perſonaltie, as if an action of waſt bee ſued againſt the tenaunt for terme of life, this action is in the realty for this that the place waſted ſhall be recouered. And alſo it is in the perſonaltie for this that ẏ treble dāmage ſhal be recouered for ẏ wrong & waſt done by the tenaunt, & for this in this action a releas of actions reals is a good plee in barr, & ſo is a releas of actiōs perſonels. In ẏ ſame maner it is in aſſiſe of nouel diſſeiſin, for this ẏ it is mixt in the realty & in the ꝑſonaltie. But if ſuch aſſiſe be arraigned againſt the diſſeiſour, the tenant of the diſſeiſor may plede a releaſe of all actions perſonals for to barre the aſſiſe but not releaſe of actions reals, for none ſhall plede a releaſe of actions reals in aſſiſe, but the tenants &c.

¶ Alſo, in ſuch actions that ought to bee

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ſued againſt the tenant of the franktenement, if the tenaunt haue a releale of al actions reals of the demandāt made vnto him before ỹ writ purchaſed, & he pleadeth it, this is a good plee for ỹ demaundant to ſay that he that pleadeth that plee had nothing in the franktenement at time of ỹ releaſe made for that he had no cauſe to haue action real againſt him.

¶ Alſo, in ſuch caſe where a man may enter in lands or tenements, he may haue of this an actiō real, which is giuē vnto him by the lawe againſt the tenaunt. As in this caſe the demaundant releaſeth to the tenant al maner actions reals, yet this taketh not away ỹ entre of the demaundant, but the demaundant may well enter, notwithſtanding ſuch releaſe, for this that nothing is releaſed but the actiō &c. In the ſame maner it is of thinges perſonels. As if a man wrongfully take my good, if I releaſe vnto him all actions perſonels, yet I may by the lawe take my goods out of his poſſeſſion.

¶ Alſo, if I haue cauſe to haue a writ of Detinue of my goods againſt mother though that I releaſe vnto him for all actions pſonels, yet I may take my goods out of his poſſeſſion, for this that no right of goodes is releaſed to him but onely the action &c. Alſo, if a man be diſſeiſed, and the diſſeiſour maketh a feoffement vnto diuers perſons to his vſe, and the diſſeiſour continually taketh the profites &c. and the diſſeiſe releaſeth vnto him all actions reals

reals, and after he ſueth againſt him a writt of Entre in nature of aſſiſe, becauſe of the ſtatute, for this that he taketh the profites. Enquire how the diſſeiſour ſhall be holpen by the ſaide releaſe, for if he will pleade the releaſe generally, then the demaundant may ſay that he had nothing in the franktenement at the time of the releaſe made, and if he pleade the releaſe ſpecially, thē it behoueth him to knowledge a diſſeiſin, & then may the demaundant enter in the land &c. by his conſiance of the diſſeiſin &c. But peraduēture by ſpeciall pleading hee may be barred of the action that he ſueth &c. though that the demaundant may enter &c.

¶ Alſo, if a man ſue appeale of felony of the death of his auncelter againſt another, though the appellant releaſe vnto the defendāt al maner actions reals & ꝑſoneis, this ſhall not help the defendant, for this that this appell is not an action real, in ſo much that the appellaunt ſhall not recouer any realty, nor ſuch appell is no action perſonall. In ſo much that the wrōg was vnto his auncelter & not vnto him, but if he releaſe to the defendāt al maner of actions, then it ſhalbe a good barre in appell, and ſo a man may ſee that a releaſe of all manner of actions, is better then a releaſe of actions reals and perſonals &c.

¶ Alſo, in appele of robberie if the defendant will pleade a releaſe of the appellant of all actions perſoneis, this ſeemeth no plee, for an action of appeale where the appellant ſhall haue

iudgement of death &c. is more high then an action perſonall, and it is not properly ſaid an action perſonal, and therefore if the defendant will haue a releaſe of the appellaunt to barre him of the appeale, it behoueth him to haue a releaſe of all maner of appeales, or a releaſe of all manner of actions, as it ſeemeth &c. But in appeale of maihim a releaſe of al manner of actions perſonals is a good plee in barre, for this that in ſuch an action he ſhall recouer but dammages.

Alſo, if a man be outlawed in an action perſonal by proces of the original, & bring a writ of error, if he at whoſe ſuit he was outlawed will pleade againſt him a releaſe of actiõs perſonals, this ſeemeth no plee, for by the ſaid action he ſhal recouer nothing in the perſonalty, but al onely to reuerſe the outlawry: but a releaſe in a writ of error ſhall be a good plee &c.

Alſo, if a man recouer det or dammage, and he releaſe to the defendaunt all manner of actiõs, yet he may lawfully ſue execution by Capias ad ſatisfaciendum, or by Elegit, or by Fieri facias, for execution by ſuch writtes may not be ſaide an action, but if after a yeare and a day the pleinetife will ſue a Scire facias to haue execution &c. then it ſeemeth a releaſe of all actions ſhall be a good plee in barre, but ſome haue thought the cõtrarie, in ſo much that the writ of Scire facias is a writ of execution, and is to haue execution. But in ſo much that vpon the ſame writ ỹ defendãt may pleade diuers matters

ters after the iudgemēt giuen to put him from
executiō, as outlawry & diuers other &c. there-
fore it may well be laid action &c. and I trow
that in a Scire facias out of a fine, a releale of all
manner of actions is a good plæ in barre, but
where a mā hath recouered det or dāmage and
it is accorded betweene thē ỳ the pleintife ſhall
be put out frō actiō, thē it behoueth ỳ ỳ plein-
tife make a releale to him of all maner actions.

¶ Alſo, if a man releale to another all manner
demaūds, this is the moſt beſt releas that he to
whom ỳ releale is made can haue, & moſt ſhall
enure to his aduantage, for by ſuch releale of
all maner of demāds, all maner of actiōs reals
perſonels, & actions of appeales, be gone & ex-
tinct, and all maner of executions be gone and
extinct. And if a man hath title to enter in any
landes or tenementes by ſuch releale his title
is gone. And if a man haue rent ſeruice or rent
charge or cōmon of paſture &c. by ſuch releale
of all maner demaundes to the tenaunt of the
land, whereof the ſeruice or the reentre is go-
ing out, or in what lande ſoeuer the common
be, the ſeruice and rent, & the common is gone
and extinct &c.

¶ Alſo, if a man releale to another all manner
quarelles, or all controuerſies or debates be-
tweene them. Enquire to what matter, and to
what effect ſuch wordes extend.

¶ Alſo, if a mā be bound by his deede to an o-
ther in a certain ſūme of mony to pay at ỳ feaſt
of S. Michael thē next folowing &c. if the ob-

lige

ledge before the said feast, release to the obligor all actions, he shalbe barred of the duitie for euer, & yet he might haue no action at the time of the releas made. But if a man let land to an other for terme of yeres, to yeeld at the feast of S. Michael next insuyng xl. shillings, & before the same feast he releaseth to the lessee all actions, yet after the same feast he shal haue an action of Debt for the nonpayment of the xl. s. notwithstanding the said release. Study the cause of the diuersity betwen these two cases.

¶ Also, where a man wil sue a writ of right, it behoueth that he pled of disseisin of him selfe or of his auncestors, & also that the seisin was in time of the same king, as he pleadeth in his plee, for this is an auncient law vsed, as it appereth by report of a certain plee, in such forme as insueth. Sir J. Barrey brought a writ of right against Raynold Ashlington, & demaunded certaine tenements &c. the mise was toined in the bank, & the original and the proces were sent before Justices errāts, where the parties came, & the xij. knights were sworne without challenge of the parties to be allowed, for this that the election was made by assent of ỹ parties with the iiij. knights, & the oth was such, That I shal say trouth &c. whether R. of A. haue more right to hold ỹ tenementes that J. Barrey demaunded against him by his writ of Right, or John to haue the tenements as he demaundeth, and for nothing to let to say the trouth, as God me helpe &c. without saying to

their knowledge, and such othe shalbe made in Attaint, & in Battail, and in waging of law, for those do euery thing vnto an end: but I. B. pleded of the disseisin of one Rafe his auncestor in the time of king Henry, & Raynold vpon the mise ioined, tendered halfe a Mark for the time &c. And vpon this Herle Iustice said to ỹ graund Assise, after that they were charged vpon the cleere right: Goodmen, Raynold gaue halfe a mark to ỹ king for that time, to the intent that if ye find that the auncestor of John was not seised in time that the demandãt hath pleaded, you shall inquire no further vpon the right, & for this ye shal say to vs whether the auncestor of John, Rafe by name, was seised in the time of king Henry, as he hath pleded or not, & if yee find that he was not seised in the time, yee shall inquire no more, & if ye find that he was seised, then inquire farther of the right: And after the graund Assise came with their verdict, & said that Rafe was not seised in the time of king Henry. wherby it was awarded that Rainold should hold the tenemẽts against him demãded to him & to his heires quite of I. Barrey & his heires, to the remnant, & John in the merry.

¶ Confirmation.

A Deede of Confirmation is most commonly in such forme, or to such effect. Nouerint vniuersi &c. me A. de B. ratificasse, approbasse, & confirmasse C. de D. statum & possessionem quos habeo, de, & in vno messuagio cum pertinentijs in N. And in some

some case a deede of cõfirmation is good & vailable, where, in the same case a deede of release is not good nor vailable. As I let land to a man for terme of his life, the which letteth the same land to another for xl. yeres, by force of ꝑ which he is possessed, if I by my deede confirme ꝑ state of the tenant for term of yeres, & the tenant for terme of life dieth during the terme of yeres, I may not enter in ꝑ land during the same terme, yet if I by my deede of release haue released to the tenãt for terme of yeres in the life of the tenant for term of life, the releas shalbe void, for this, that thẽ no ꝓuitie was betwen me & the tenant for terme of yeres, for a releas is not auailable to ꝑ tenãt for term of yeres, but where a ꝓuitie is betwen him, & him ꝑ releaseth. In ꝑ same maner it is if I be disseised, & ꝑ disseisor maketh a releas to another for term of yeres, if I releas vnto the termor ꝑ is void: But if I confirm ꝑ estate of the termor, ꝑ is good & effectual. Also if I be disseised, & I confirme ꝑ state of the disseisor, then he hath a good & rightfull estate in fee simple, though ꝑ in the deede of confirmation no mention is made of his heires, for this ꝑ he had fee simple at the time of the cõfirmation, for in such case, if ꝑ disseisee confirm the estate of ꝑ disseisor, to haue & to hold to him for term of his life, yet ꝑ disseisor hath fee simple, & is seised in his demesne as of fee, for this ꝑ whẽ his estate was confirmed, he had fee simple, & in such deede he may not chang his estate wõut entre vpon him &c. In ꝑ same maner it is, if ꝑ es-

tate be confirmed for terme of a day, or for term of an hower, he hath a good estate in fee simple, for this, that his estate in fee simple was once confirmed, for Confirmare, idē est qd' firmū facere.

¶ Also if two be disseisors, & the disseisee releaseth to the one, he shal hold his felow out of the land: but if the disseisee confirme the estate of the one wout more speech in the deede, some say that he shal not hold his fellow out, but he shal hold iointly with him, for this, ꝑ nothing was confirmed but this estate that was ioint, & for this some haue said, that if ij. iointenants be, & the one confirmeth the estate of the other, that he hath but a ioint estate as he had before. But if he haue such words in the deede of confirmation, to haue & to hold to him and to his heirs al the tenemēts wherof mention is made in the confirmation, then he hath estate sole in the tenements, and therefore it is a good and a sure thing in euery confirmation to haue these wordes, to haue and to hold the tenements &c. in fee, or in fee taile, or for terme of life, or for terme of yeres, after or as ꝑ cause or matter is: For to the intent of some, if a man let land to another for term of life, & after he cōfirmeth his estate by these words, to haue & to hold his estate to him & to his heirs, this confirmation as cōcerning his heirs is void, for his heirs cānot haue his estate which was but for term of life, but if he confirm his estate by these words, to haue ꝑ same lād to him & to his heirs, this confirmation maketh fee simple in this case to him

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in the land, for this, ꝑ these words to haue & to hold &c. goeth in ꝑ land & not to the estate that he hath &c. Also if I let certein lād to a womā sole for terme of her life, ꝑ which taketh a husbād, & after I confirme the estate to the husbād & to the wife for terme of their ij. liues, in this case ꝑ husbād holdeth not iointly w̄ the wife, but holdeth in the right of his wife for terme of his life, but this cōfirmation shal enure to ꝑ husband by way of remainder for terme of his life, if he suruiue his wife, but if I let land to a woman sole for terme of yeres, which taketh a husbād, & after I confirme the estate to the husbād & ꝑ wife, for terme of both their liues, in this case they haue ioint estate in ꝑ frankte-nemēt of ꝑ lād, for this ꝑ the wife had no frāk-tenemēt before. Also if a Parson of a Churche charge the glebe of his church by his dæde, and the patron & the ordinary cōfirme the sāe grāt & al that is cōprised w̄in the same grāt, ꝑ same grāt shalbe in his strength after the purpose of ꝑ same grāt, but in such case it behoueth ꝑ the patron haue fee simple in the aduowson, for if he haue estate in the auowson for terme of life, or in taile, then the grāt shal stand but during his life, & the life of the person that graunted it &c. Also if a man let lande for terme of lyfe, which tenant for terme of life chargeth ꝑ land with a rent in fee, & he in the reuersion confirmeth ꝑ same grāt, this charge is good ynough & effectual, also if there be perpetual Chauntry, whereof the ordinary hath nothing to meddle

noꝛ to do, the patron of the chātry, & the chaplaine of the same chātry may charge ꝑ chantrie with a rent charge in perpetuity. Also in some case these verbes, Dedi & concessi, haue the same effect in substāce, & shal enure to the sāe intent as this verbe confirmaui, as if I be disseised of a plough land, & after I make such a deed &c. Sciant presentes &c. q dedi to the disseisoꝛ the sayd plough land &c. And if I deliuer al onely the deed to him wout liuery of seisin of the lād, that is a good cōfirmation & as strong in the law, as if he had in the deed this verbe, cōfirmaui &c.

¶ Also I let land to a man foꝛ terme of yeres by foꝛce of which he is possessed, and after I make him a deed &c. Quod dedi vel concessi &c. the same land to haue foꝛ term of his life, & deliuer him his deed, then by & by he hath estate in the land foꝛ terme of his life, & if I say in the deed, to haue to him & to his heires of his body engendꝛed, he hath estate in the tail, & if I say in the deed to haue & to hold to him & to his heirs he hath estate in fee simple, foꝛ this shall enure to him by foꝛce of confirmation to enlarge his estate. Also if a man be disseised, & the disseisoꝛ dieth seised, & his heires be in by discent, after the disseisee, & the heire of the disseisour make iointly a deed to another in fee, & liuery of seisin vpon this is made, as to the heire of the disseisoꝛ that ensealeth the deed, the tenements passe by the same deed by way of feoffement, & as to the disseisee that ensealeth the same deede, this shal not enure by the way of confirmation, but

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if the disseisee in this case bring a writ of Entre in the (Per & Cui) against the alien of ỹ heire of the disseisor, enquire how he shal plede the deed against the defendant by way of cõfirmation &c. And know this my child, that it is one of the most honorable, laudable, and profitable things in our law, to haue the science of well pleading, in actions reals & personals, and for this I counsail thee, especially to set thy courage & care to learne that.

¶ Also if there be Lord & tenãt, & the lord cõfirmeth the estate ỹ the tenãt hath in the tenements, yet the seignior y wholy abideth to the lord as it was before. In the same maner it is if a man haue a rent charge out of certein land & he confirmeth the state that the tenant hath in ỹ land, yet abideth to the confirmor the rent charge. In the same maner it is if a man haue common of pasture in the land of any other, if he confirme the state of the tenant of the land, nothing shal depart from him of his common, but this notwithstanding the cõmon abydeth to him as it was before.

¶ But if there be Lord & tenant, which holdeth of his Lorde by seruice of fealty & xx.s. of rent, if the Lord by his deede confirme ỹ estate of the tenant to hold by xij.d.j.d. or by an ob. in this case the tenant is discharged of all other seruices, and shall yelde nothing to the Lord but that ỹ is comprised within the same confirmation, yet if the Lord will by the deede of confirmation, that the tenaunt in this case

ought to yeld to him an Hawk or a rose yerely at such a feast &c. this reseruation is voide, for this that he reserueth to him a new thing that neuer was parcel of the seruices before ỹ confirmation, & so the Lorde may abridge the seruices by such confirmation, but he may not reserue to him a new seruice &c.

¶ Also if there be Lord, mesne, & tenāt, & the tenant is an Abbot ỹ holdeth of the mesne by certein seruices yerely, ỹ which hath no cause to haue acquitās against his mesne for to bring a writ of Mesne &c. In this case if the mesne confirme ỹ estate ỹ the abbot hath in the land to haue & to hold the lande vnto him & his successors in frankalmoigne or free almes &c. in this case this confirmation is good, & then the Abbot holdeth of the mesne in frankalmoign: & ỹ cause is for this, ỹ no new seruice is reserued, for al ỹ seruices specially specified bee extinct, & nothing is reserued to the mesne, but ỹ abbot shal hold ỹ land of him as it was before the confirmation, for he that holdeth in frankalmoigne ought to do no bodely seruice, so that by such confirmation it appeareth ỹ the mesne shal not reserue vnto him no new seruice, but that the lands shalbe holden of him as it was before & in this case the abbot shal haue a writ of Mesne if he be distrained in his default by force of the said confirmation, where percase he might not haue such a writ before &c.

¶ Also if I be seised of a villein, as of a villein in grosse, & another taketh him out of my possession claiming hī to be his villein, whereas he

he hath no right to haue him as his villeine, & after I confirme the estate to him ꝑ he hath in my villein, this confirmation seemeth void, for this, ꝑ none may haue possession of a man as of a villein in grosse, but he which hath ryght to haue him as his villein in grosse, & in so much ꝑ he to whō ꝑ cōfirmation was made, was not seised of him as of his villein at ꝑ time of the confirmation, such cōfirmation is void: but in this case if such wordes were in the deed, Sciatis me dediſſe & confirmaſſe tali &c. talem villanū meū, this is good, but this shal enure by force & way of graunt, & not by way of confirmation &c.

¶ Also some times these verbes (Dedi & conceſsi) enure by way of extinguishmēt of ꝑ thing giuen or graunted. As a tenant holdeth of his lord by certein rēt, & the lord by his deed granteth to the tenant & to his heires the rent &c. this shal enure to the tenāt by the way of extinguishment, for by this graunt the rēt is extinct. In the same maner it is where one hath a rent charge of certein land, & he graunteth to ꝑ tenant of the land the rent charge, & ꝑ cause is for this, ꝑ it appeareth by ꝑ wordes of ꝑ grāt that the will of the donour is, that the tenant shal haue the rent &c. in so much that hee may haue no rent out of his owne lande, for this deed shal be vnderstood and taken for the most aduantage and auayle of the tenaunt that yt may be taken, and for that it is by way of extinguishment. Also if I let land to a man for terme of yeres, and after I confirme his estate without mo wordes put in the deede, he hath

no

no greater estate but for terme of yeres, as he had before, but if I release to him my right ỳ I haue in the lande without mo wordes put in the deed, he hath estate of franktenement, and so mayst thou my childe vnderstand great dyuersities betweene releases and cõfirmations. And if I be within age, & let lande to one for terme of xx. yeres, & he graunteth the lande for terme of x. yeres, so ỳ he grãteth but parcell of the terme: In this case when I am of full age if I releas vnto the grauntee of the lessee &c. this releas is void, for this, ỳ there is no priuitie betweene him & me. But if I confirme his estate, thẽ this confirmation is good, but if my lessee graunt al his estate to another, then my release made to the grantee is good & effectuall. Also if a man graunt a rent charge out of hys land to another for terme of his life, & after I confirme his estate in the same rent, to haue & to holde to him in fee taile or in fee simple, this cõfirmation is void, as to the enlarging of his estate, for this, that he that confirmeth had no reuersion in the rent, but if a man seised in fee of rent seruice or of rent charge, and he graunteth the rent to another for terme of lyfe, and the tenant attorneth, and after he confirmeth the estate of the grauntee in fee taile, or in fee simple, this confirmation is good as to enlarge his estate after the wordes of the deede of confirmation, for this that hee that confirmed the estate at the tyme of the confirmation had the reuersion of the rent &c. But in this case afore-

aforesaid, where a man granteth a rent charge to another for terme of life, if he will that the grauntee shall haue estate in the taile or in fee, him behoueth that the deed of the grauntee of the rent charge for terme of life, be surrendred or cancelled, and then to make it a newe deede of such a rent charge, to haue and to take to the grauntee in the taile or in fee. Ex paucis dictis intendere plurima possis.

¶ Attournement.

ATtournement is if there be Lord & tenant, & the Lord wil grāt by his deede the seruice of his tenant to another for terme of yeres, or for terme of life, or in taile, or in fee, him behoueth that the tenant attourne to the grauntee in the life of the grauntor by force & vertue of the graunt, or otherwise the graunt is void, & attournement is none other thing in effect, but when the tenant hath hard of the graunt made by his Lord, that ỹ same tenant by word agree to the said graunt, as to say to the grauntee, I agree me to the graunt made to you, or I am wel content of the graunt made to you &c. but the more common attournement is to say, Sir, I attourne to you by force of the same graunt, or I become your tenant &c. or to deliuer vnto the grauntee .i.ō. ob. or farthing, by way of attournement &c.

¶ Also if a man be seised of a mannour, which manor is parcel in demesne, & parcel in seruice,

if

if he wil alien ſuch a manner to another, it behoueth ꝯ by force of the alienation al ꝯ tenãts that hold of the alienor (as of this maner ꝛc.) attourne to the alienee, or otherwiſe ꝯ ſeruices abyde continually in the alienor, except tenãts at will, for it needeth not that tenants at wil atturne vpõ ſuch alienation ꝛc. for this that ꝯ ſame lands or tenemẽts ꝯ they hold at will do paſſe to the alienee by force of ſuch alienation.

¶ Alſo if there be Lord and tenaunt, and the tenãt letteth the tenemẽts to a man for terme of life, the remainder to another in fee, if ꝯ Lord grãt the ſeruices to the tenant for terme of life in fee, in this caſe the tenant for terme of life hath fee in the ſeruices, but ꝯ ſeruices bee put in ſuſpence during his life, but his heires ſhall haue the ſeruices after his death, ꝛ in that caſe it needeth not attournement, for by the acceptance of the deed of him that ought to attorne, this is attornement in him ſelfe ꝛc. but where the tenant hath as great and high eſtate in the tenements as the Lord hath in the ſeigniorie, in ſuch caſe if the Lord grant the ſeruice vnto the tenant in fee, this enureth by way of extinguiſhment, cauſa patet.

¶ Alſo if there be Lord ꝛ tenant, ꝛ the tenãt maketh a leaſe to one for terme of life, ſauing the reuerſion vnto him, if ꝯ lord graunt ꝯ ſeigniory to ꝯ tenant for terme of life in fee, in this caſe it behoueth ꝯ he in ꝯ reuerſion attorne to the tenãt for terme of life by force of ꝯ grant, or otherwiſe the grant is void, for this that he in the

the reuersion is tenant to the Lord.

¶ Also if there bee Lord and tenant, and the tenant holdeth of the Lord by twentie manner of seruices, and the Lord graunteth hys Seigniorie to another, if the tenant pay or do any of the seruices to the grauntee, this is a good attournement, of, and for the seruices, though that the tenaunts entent was to attourne but of the same parcel, for this that the seigniory is an whole thing, though that there bee dyuers maner of seruices that the tenant ought to do.

¶ Also, if there bee Lord and tenant, and the tenant holdeth of the Lord by many manner of seruices, and the Lord graunteth the seruices to an other by fine, if the grauntee sue a Scire facias out of the same fine, for any partell of the seruices, and had iudgement to recouer, this iudgement is a good attournement in the law for all the seruices.

¶ Also if the Lord of the rent, graunteth the seruices vnto another, and the tenaunt attourneth by a penie, and after the grauntee distrayneth for rent behinde, and the tenant to hym maketh rescous: In this case the grauntee shall haue no Assise of the rent, but hee shall haue a writ of Rescous, for that the gift of the penie was but by way of attournement. But if the tenant had gyuen vnto the grauntee the said penie as partell of the rent, or an halfe penie, or a farthing, by way of seisin of the rent, then this is a good attournement, and also it

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is a good seisin to the grauntee of the rent, and then vpon such rescous the grauntee shal haue an Assise &c.

¶ Also, if a man let tenements for terme of yeres, by force of which the lessee is seised, and after the Lord graunteth by his deede the reuersion to an other for terme of life, or in taile, or in fee, it behoueth him in this case that the tenant for terme of yeres attourne, or otherwise nothing passeth to such grauntee by such deede. And if in this case the tenant for term of yeres attourne to the grauntee, then by and by passeth the franketenement to the grauntee by such attournment, without any liuery of seisin &c. for this, if any liuery shalbe made, or needeth to be made in such case, then the tenāt for terme of yeres shalbe at the time of the liuery of seisin out of his possession, which should be agaynst reason.

¶ Also, if land bee let to a man for terme of yeres, the remainder to another for terme of life, reseruing to the lessor a certain rent by the yere, and liuerie of seisin is made vpon this to the tenant for terme of yeres, if he in the reuersion in such case grant his reuersion to another &c. and the tenant that is in the remainder after the term of yeres attourneth, this is a good attournement, and he to whom the reuersion is graunted, by force of such attournement shall distraine the tenant for terme of yeres for the rent due after such attournement, though the tenant for terme of yeres neuer attourned vnto him,

him, and the cause is for that, where the reuer-
sion is dependant vpon the state of franktene-
ment, it sufficeth that the tenant of the frank-
tenement attourne vpon such graunt of reuer-
sion &c. And it is to wit, that where a lease for
terme of yeres, or for terme of life, or a gift in
the taile is made to any man, reseruing to such
a lessor or donor certain rent, if such a lessor or
donor graunt his reuersion to another, and the
tenant of the land attourne, the rent passeth
to the grauntee, though in the deede of the graunt
of reuersion, no mention is made of the rent, for
this that the rent is incident to the reuersion
in such case, and not econuerso, for if a man will
graunt the rent in such case vnto another, re-
seruing to him the reuersion of the land, though
the tenant attourne to the grauntee, this shall
be but a rent secke &c.

¶ Also, if a man let lād vnto another for term
of life, and after such lease he confirmeth by a
deede the estate of the tenant for terme of life,
the remainder to another in fee, & the tenant
for terme of life accepteth the deede, then is the
remainder in deede to him to whom ỹ remain-
der was giuen or limitted in the same deede, for
by the acceptance of the tenant for terme of life
of the same deede, this is a graunt of him, & is
an attournement in law: But yet he in the re-
mainder shal haue none action of wast, nor other
benefit by such remainder, but if that he haue ỹ
same deede in his hand, by which ỹ remainder
was grāted vnto him, & for this ỹ in such case

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the tenant for terme of lyfe will retaine to him the deede, to the intent that he in the remainder shal not haue an action of wast against him, for this that he may not come to haue the possession of the deede &c. It shalbee good in such case for him in the remainder, that a deede indented be made by him that wil make the confirmation, and the remainder ouer &c. And hee that maketh such confirmation delyuer a part of the Indenture to the tenaunt for terme of life, and the other part to him that hath the remainder, and then he by shewing of the part of the Indenture, may haue an action of wast against the tenant for terme of life, & also other aduantage, that he in the remainder may haue in such case.

¶ Also, if two Jointenantes bee, which lett land to an other for terme of life, yelding to them and their heires a certaine rent by yeare: In this case if one of the two iointenants in the reuersion release to the other iointenants in the same reuersion, this release is good, and hee to whom the release is made, shall haue onely the rent of the tenaunt for terme of life and shall haue a writ of Wast against them, though he neuer attourned by force of such release. And the cause is, for the priuitie that once was betwene the tenant for terme of life, and them in the reuersion.

¶ In the same maner, and for the same cause it is, where a man letteth lande to an other for terme of his life, the remainder to an other

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for terme of his life, reseruing the reuersion to the lessour, in this case if he in the reuersion release to him in the remainder &c. & to his heirs all his right &c. then he in the remainder hath a fee &c. and shall haue a writ of waste against the tenant for terme of life wout any attornement of him &c.

¶ Also if a lease be made for terme of life the remainder vnto an other in the taile, ỹ remainder ouer to the right heires of the tenaunt for terme of life, in this case if the tenāt for terme of life grant his remainder in fee to another by his deede, the remainder by & by passeth by his dede without any other attornemēt. For if any ought to attorne in this case, it should be ỹ tenāt for terme of life. And it were in vaine that he attorne vpon his owne grant &c.

¶ Also, if there be Lord and tenant, & the tenaunt holdeth of the Lord by certain rent and knightes seruices, if the Lord graunt the seruices of the tenant by fine, the seruices bee by and by in the grauntee by force of the fine, but yet the lord may not distraine for any parcel of his seruices without attornement. But if the tenant dye his heire being within age, the lord shall haue the ward of the body of the heire and of the land &c. howbeit that hee neuer attourned. For this that ỹ seigniory was in the grauntee maintenāt by force of the fine. And also in some case if the tenant dye without heire, the lorde shall haue the tenaunty by way of Eschete. In the same manner it is if a

man graunt ꝑ reuerſion to his tenant for term of life to an other by fine, the reuerſion palleth preſently to ꝑ grauntee by force of the fine, but the grauntee ſhall neuer haue action of waſte without attournement &c. But yet if ꝑ tenant for terme of life aliene in fee, the grauntee may enter &c. for this ꝑ the reuerſion was in him by force of ꝑ fine, & ſuch alienation was to his diſenheritance. But in this caſe where ꝑ lord graunteth the ſeruices of his tenant by fine, if the tenant dye, his heires being of full age, ꝑ grauntee by the fine ſhall not haue the reliefe, nor neuer ſhall diſtraine for the reliefe, except there had been ſome attornement of the tenant that dyed &c. for of ſuch thinges that lye in diſtreſſe, vppon the which a writ of Replegiare is ſued &c. a man ought to auow ꝑ taking, good & righteous &c. there ought to be attornement of the tenant, & howbeit that the grãt of ſuch ſeruices be by fine. But to haue warde of landes and tenementes ſo holden duringe the nonage of the heire, or them to haue by way of eſcheate, there needeth not any diſtreſſe &c. but an entre in the lande by force of the right of the ſeigniory that the grantee hath by force of the fine.

¶ Alſo in auncient Boroughes or Citties where tenementes within the ſame boroughes or Cities beene deuiſable by teſtament by the cuſtome and the vſe &c. if in ſuch borough or citie a man be ſeiſed of rent ſeruice or of rent charge, and he deuiſeth ſuch rent or ſeruice to

another by his testament & dyeth &c. In this case he to whō the deuise is made may distrain for the rent or the seruices behinde, howbeit ỹ the tenant neuer attourned. In the same maner it is where a man letteth such tenementes deuisable to an other for terme of life, or for terme of yeares, & deuised the reuersion by his testament to an other in fee or in fee taile, and dyeth, & anone after ỹ the tenant maketh wast, he to whome the deuise was made shall haue a writt of wast, howbeit ỹ the tenant neuer attourned, & the cause is for this that the will of the deuisor made by the testament, shal be performed after the intent of the deuysor, & if the effect of this should lye vpon the attourning of the tenant &c. Then percase the tenant would neuer attorne, & then the will of the deuysour should neuer be performed, & therefore the deuisee shall distraine or haue an action of waste without attornement. For if a mā deuise such tenementes to another by his testament (habendū sibi imperpetuum) and dyeth, and the deuisee entreth, he hath a fee simple. Causa qua supra, & yet if a deede of feoffement were made to him by the deuisour of the same tenementes (habendum & tenendum sibi imperpetuum) if lyuerie and seysin were neuer thereupon made, he shall haue none estate but for terme of life &c.

¶ Also if a man seysed of a Manour which is parcell in demeane, and parcell in seruyces and thereof be disseysed, but the tenaunt

which holdeth of the manour, neuer attorneth to the disseisor, in this case, howbeit ỹ the disseisor die &c. & his heire is in by discēt, yet may the disseisor distrain for the rent being behind, & haue ỹ seruice: but if the tenants come to the disseisour & say we become your tenauntes &c. or otherwise make attornement to him &c. and after the disseisor dyeth seised &c. then ỹ disseisy may not distrain for the rēt, for this that all the maner discendeth to the heire of the disseisour. But if one holde of mee by rent seruice which is a seruice in grosse, & another that no right hath, claimeth the rent & receiueth & taketh the same rent of my tenant by cohersiō of distresse, or by other fourme & so disseiseth mee by taking such rent, howbeit ỹ such a disseisor dye seised by such taking of the rent, yet after his death I may well distraine for the same rēt being behinde before the death of the disseisour & after his death, & the cause is this, ỹ such is not my disseisor but by election at my will, for howbeit that he toke the rent of the tenant I may at al time distraine my tenant for ỹ rent behind &c. so it is to me but as if I will suffer the tenaunt to bee by so much time behinde of payment to mee of the same rent, for the payment of my tenaunt to another to whom he ought not to paye, is no disseisin to mee, nor shall not put mee out of my rent without my will and election, for howbeit that I may haue assise against such a taker &c. yet this is at my election if I will take him as

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my diſſeiſour or not, ſo ỹ ſuch diſcents of rẽts in groſſe ne putteth not out the lords frõ their diſtreſſe, but ỹ at eche time they may well diſtraine for the rent behind, & in this caſe if after the deceaſe of him ỹ ſo wrõgfully toke ỹ rent, I graunt by my dæde the ſeruices to another, & the tenant attorneth: this is good ynough, & the ſeruices by ſuch graunt & attornement, incontinent be in the grauntee &c. But otherwiſe it is where the rent is parcell of the manour, & the diſſeiſour dyeth ſeiſed of the whole manour, as in the caſe beforeſaid.

¶Diſcontinuance. Cap. xi.

DIſcontinuaunce is an auncient worde in the law, and hath diuers ſignifications &c. but as to one entẽt it hath ſuch a ſignification, that is to ſaye, where a man hath aliened to an other certaine landes or tenements, and dieth, and an other hath right to haue the ſame landes or tenementes, but he ne maye enter in them, becauſe of ſuch alienation &c. As if an Abbot ſeiſed of certeine lands and tenementes in fee, and he alieneth the ſame landes and tenemẽts to an other in fee or in taile, or for terme of life, and the abbot dyeth, his ſucceſſour may not enter in the ſame landes and tenementes, howbeit that hee haue right to haue them as in the right of the houſe, but he is put to his action to recouer the ſame landes or tenementes which is called a writte de ingreſſu ſine

assensu capituli.

¶ And if a man seysed of lande as in the right of his wife &c. and thereof enfeoffeth an other &c. and dyeth, the wife may not enter, but she is put vnto her action the which is called Cui in vita.

¶ Also, if tenant in the tayle of certaine land thereof enfeoffe another &c. and hath issue and dyeth &c. his issue may not enter in the lande, howbeit that he hath right and title to that, but that he is put to his action, that is called a Formedone in the discender.

¶ Also if there be tenāt in the taile, & the reuersion is to the donour and to his heirs, if the tenāt make a feffemēt &c. and dyeth wout issue, he in the reuersion may not enter, but is put to his action of Formedon in the reuerter, and in the same maner it is wher the tenant in ꝑ taile of certaine lande where the remainder is to an other in the taile, or to another in fee, if the tenant in the taile alieneth in fee, or in fee tayle &c. and after dieth wout issue, they in ꝑ remainder may not enter, but be put to their writ of Formdon in the temainder &c. & for this that by force of such feoffemēt & such alienations in the cases aforesaide, & in like cases they which haue title & right after ꝑ death of such a feoffor or alienor may not enter, but be put to their actions vt supra. Therfore such feoffements and alienations be called discontinuances.

¶ Also, if a tenāt in the taile be disseysed, & he releaseth by his deede to the disseisour, & to his heires

heires al the right ỹ he hath in the same lande, this is no discontinuãce, for ỹ nothing of right passeth to the disseisour but for terme of life of the tenãt in the taile ỹ made the release &c. But by the feoffemẽt of tenant in the taile a fee simple passeth by the same feoffemẽt by force of liuery of seisin &c. but by force of a release, nothing passeth but the right that he may lawfully & rightfully release without hurt or dãmage to other plons which thereto haue right after his decease &c. and so it is a great diuersitie betweene a feffemẽt of the tenant in ỹ taile, and a releas of the tenant in the taile, But it is said, that if tenant in the taile in this case release to the disseisor, and bindeth him and his heires to warrantise &c. and dyeth, and this warranty discendeth to his issue, thẽ that is a discontinuance because of warrantise &c. But if a man haue issue a son by one wife which dieth, & after he taketh another wife, & the tenements be giuẽ to him & his second wife, and to ỹ heires of their two bodies engendred, & they haue issue another son, then ỹ second wife dieth, & after ỹ tenant in the taile is disseised, and he releaseth to his disseisor al his right &c. and bindeth him & his heires vnto warrantise, and dyeth, this is no discontinuãce to the issue in ỹ taile by the second wife, but he may wel enter &c. for this that the warrantise discended to his elder brother that his father had by his first wife.

In the same maner where tenemẽts be descen-

dable to the yonger sonne after the custome of borough English, be intaile &c. & the tenant in the taile hath issue two sons & is disseised, & he releseth to his disseisor al his right with warrantie & dyeth, ỹ yonger sonne may enter vpō the disseisor notwithstanding the warrantise, for this ỹ the warrantise discendeth to the elder sonne, for alway ỹ warrantise discendeth &c. to him that is heire by the common law.

¶ Also, if an Abbot be disseised, and he releaseth to the disseisour with warrantise, this is no discontinuance to his successour, for this ỹ nothing passeth by this release but the right that he hath during the time that he is Abbot and this warrantise is expired by his priuation or by his death.

¶ Also, if tenant in the tayle be seised of certaine lande, and he letteth the same lande for terme of yeres, by force of which lease the lessee is in possession, to which possession the tenaunt in the tayle by his dæde releaseth al his right that he hath in the same lande to the lessee and to his heires for euer. this is no discōtinuance, but after the decease of the tenaunt in the tayle, his issue may well enter, for this that by such release nothinge passeth but for terme of life of the tenant in the tayle. In the same maner if the tenant in the taile confirme the estate of ỹ lessee for terme of certaine yeres to haue and to holde to him and to his heires, that is no discontinuaunce, for this that nothinge passeth by such confirmation, but the

estate

eſtate ẏ the tenaunt in the tayle had foꝛ terme of his life.

¶ Alſo, if a tenāt in ẏ taile by his dæde grant to another all his eſtate ẏ he hath in the tenements entailed to him, to haue & to hold al his eſtate to the other & to his heirs foꝛ euer, & deliuereth ſeiſin accoꝛdinge. In this caſe the tenant to whom the alienation was made, hath none other eſtate but foꝛ term of life of ẏ tenāt in tayle, & ſo it may well be pꝛoued ẏ the tenāt in ẏ taile may not grant. ne alien ne make any rightful eſtate of ẏ frāktenemēt to an other pſō but foꝛ terme of his owꝛn life &c. Foꝛ if I giue certaine land in the taile to a mā, ſauing ẏ reuerſion to me, & after the tenaunt in ẏ tails enfeoffeth another in fæ, the feoffe hath no right eſtate in the tenemēts, foꝛ two cauſes. One is foꝛ ẏ that by ſuch feffemēt my reuerſion is diſcōtinued which is a wꝛong actiō & not a rightful act. Another cauſe is, if the tenant die, and his iſſue ſueth a wꝛit of Foꝛmdon againſt the feoffee, the wꝛit ſhall ſay & alſo the declaratiō, ẏ the feoffe wꝛōgfully him defoꝛced, therfoꝛe if wꝛōgfuly he hī defoꝛced, he had no right eſtate

¶ Alſo, if lande be let to a man foꝛ terme of his life, the remainder to another in the taile if he in ẏ remainder wil graunt his remainder to another in fæ by his dæde, & ẏ tenant foꝛ terme of life attourneth, this is no diſcontinuance of the remainder.

¶ Alſo, if a man bee tenaunt in the tayle of auowſon in groſſe oꝛ of cōmon in groſſe, if hee by

by his deede will graunt the aduowson or the common to another in fee, this is not discontinuance, for in such case the grauntee hath no estate but for terme of life of the tenant in the taile ꝑ made this graunt &c. Note well ꝑ such things as passe by way of grāt made by deede, made in the countrey &c. such graunt maketh no discontinuance as in the case aforesaid, & other like cases &c. And howbeit ꝑ such things be graunted in fee, by fine leuied in the kinges court &c. yet they make no discontinuance &c.

¶ Also, if a man be seised in tayle of landes deuisable by testament &c. and he deuiseth it to an other in fee, and dyeth, & the other entreth, this is no discontinuance, for this that no discontinuance was made in the life of the tenāt in the taile &c.

¶ Also, if an Abbot haue a reuersion or a rent seruice, or a rent charge, and will graunt that reuersion, rent seruice, or rent charge to another in fee, & the tenāt attorneth &c. this is no discontinuance. In ꝑ same maner it is where an Abbot is seysed of aduowson or of suche things ꝑ passe by way of grant without liuerie of seysin &c.

¶ Also, if there be graundfather, tenaunt in the tayle, father and sonne, and the graundfather is disseised by the father, and the father maketh a feoffement in fee without warrantise and dyeth, and after the graundfather dyeth, the sonne may well enter vpon the feoffee

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for this that this was no discontinuāce, in so much ỹ the father was not seised by force of ỹ taile at the time of the feoffement &c. but was seised in fee by disseisin made to ỹ grandfather.

¶ Also, if a woman inheritrix haue an husbād within age, which maketh a feoffement of the tenements of the wife and dyeth, it hath beene questioned if the wife may ēter or not. And it seemeth to some men that ỹ entrie of the wife after the death of her husbande shall be lawful in this case, for when her husband made suche a feoffement &c. he might well enter notwithstanding such feoffemēt during the couerture, and hee might not enter in his owne right, but in the right of his wife &c. Ergo such right that hee had to enter in the right of his wife &c. that right of entre abideth to the wife &c. after his decease, and it hath beene said, that if two ioyntenantes being within age, made a feoffement in fee, & one of the children dieth, & the other suruiueth, in so much that both children might enter ioyntly in their liues, this right of entre groweth all to him that suruiueth, and so may enter into the whole &c.

¶ Also, the heire of the husbād that made the feoffemēt within age may not enter, for this ỹ no right descendeth to such an heire in the case aforesaid, for this that the husband had neuer any thing but in ỹ right of his wife. And also when a childe maketh a feoffement beinge within age, this shall neuer grieue nor hurt him but ỹ he may well enter &c. And this shoulde

be

be against reason that such a feoffement made by him that was not able to make such a feffement shall grieue or hurt other, to toll other of their entries &c. And for these causes, it seemeth to some ꝑ after the death of such an husbād so being within age at the time of the feoffement &c. that his wife may well enter &c.

¶ Also, if a woman inheritrix taketh an husband and hath issue a son & the husband dieth, & she taketh an other husband, and the seconde husband letteth ꝑ lande ꝑ hee hath in the right of his wife to an other for terme of his life, & after the wife dyeth, & after the tenāt for terme of life surrendreth his estate to the secōde husband &c. Enquire if the sonne of the wife may enter or not, in this case ypō the secōd husband during the life of the tenaunt for terme of life, But it is cleare lawe in this case ꝑ after the death of the tenaunt for terme of life, the sōne of the wife may well enter, for this ꝑ the discontinuance ꝑ was made all only for terme of life is determined by the death of the same tenant for terme of life &c.

¶ Also, if ꝑ parson or vicar of a church alyen certaine landes or tenementes parcell of his glebe &c. to an other in fee & dyeth, or resigneth &c. his successour may well enter, notwithstāding such alienation as it is saide in a Note, Anno 2. Henric' 4. Termino Michael quæ sic incipit. Nota quod dictum fuit pro lege. In a writ of Accompt brought by the master of a Colledge, that if a parson or a vicar grant certein lands

that

that is of the right of his church to another & dieth or changeth: that his successor may enter And I trowe ỹ cause is for this ỹ the parsō or vycar ỹ is seised &c. in right of the church hath no right of ỹ fee simple in the tenemēts but the right of the fee simple thereof abydeth in an other person. And for this cause his successor may wel enter, notwithstāding such alienation &c. for a Bishop may haue a writ of right of tenemēts of right of his Bishoprich, for this that the right of fee simple abideth in him & in his chapiter: and a Deane may haue a writ of right &c. for this that the right abideth in him and in his chapiter, and an Abbot may haue a writ of right, for this ỹ ỹ right abideth in him and in his couēt, & sic de alijs casibus consimilibus &c. but a parson or vicar may not haue a writt of right &c. but the higheſt writ ỹ they may haue, is a writ de Iuris vtrū, the which is a great proofe that the right of fee simple is in abeiāce, that is to say, all only in the remembrance, entendement & consideration of the law, for meseemeth that such a thing in such a right that is said in diuers bookes to be in abeiance, is as much to say in latin. s. talis res vel tale rectum que vel quod non est in homine adtunc superstite, sed tantummodo est & consistit in consideratione & intelligentia legis &c. & quidam alij dixerunt talem rē aut tale rectū fore in nubibus &c. But I suppose that they vnderstand these words in nubibus &c. as I haue said before.

¶ Also if a parson of a Church dye, now the

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franktenemēt of the glebe of the personage is in no man, during the time that the personage is void, but is in abeiā:e, that is to say, in cō=sideration & intelligence of ꝑ lawe, till another be made parsō of ꝑ same church, & immediately when another is person, the franktenement in deede is to him as successor.

¶ Also some men peraduenture will argue & say, ꝑ in so much that the person with thassent of the patron & Ordinary, may graunt a rent charge out of the glebe of his personage in fee, and so charge the glebe of his ꝓsonage perpe=tually, Ergo they haue fee simple, or two or one of thē hath fee simple at the least &c. To this it may be aunswered, ꝑ it is a principall in law, that of euery land there is a fee simple in some mā or else the fee simple is in abeyance &c. And another principall is, ꝑ euery land of fee simple may be charged with a rent charge in fee, by one way or by another &c. and when such rent is graunted by the deede of the person, the pa=trone and the Ordinarie in fee, none shall haue no prēudice nor losse by force of suche graunt. But the grauntours in their liues, & the heire of the patrone, and successour of the Ordinarie after their deceases, and after such charge if the person die, his successour maye not come to the sayde Church to bee parson of the same church by the law. But by presentment of the patron and admission and institu=tion of the Ordinarie &c. And for this cause it behoueth that the successor holde him content

and

and agreed, with that which his patron & Ordinary lawfully haue don before. But ỹ cause that such rent charge is gone, is for this, that they which hath entries in ỹ said church, that is to say, the patron after the law temporal, & the Ordinary after ỹ law spiritual, were assẽted as parties vnto such a charge &c. and this seemeth the very cause that such glebe may bee charged in perpetuitie &c.

¶ Also, if a Bishop alien landes which beene parcell of his bishoprick, & dyeth, this is a discõtinuance to his successor, for this, ỹ hee may not enter, but is put to his writ De ingressu fine assensu Capituli &c.

¶ Also, if a Deane alien lande parcell of his Deanry, & dyeth, his successor may not enter, but he may haue a writt De ingressu fine assensu Capituli &c.

But if the Deane & the Chapiter haue lãd to thẽ & to their successors in common &c. Howbeit ỹ the Deane alien such landes his successors may wel enter, for this that the frankte-nement at the time of the alienation, was as wel in ỹ Chapiter as in ỹ Deane. But where the Deane is sole seysed as in right of his Deanry, thẽ such alienation is discontinuance to his successour, as it is aforesaid. Also some men will argue and say, that if an Abbot & his couent be seysed in their demeane as of fee, of certaine land to them and to their successours &c. and the Abbot without assent of his co-uent alyeneth the same lande vnto another,

and

& dyeth, this is a discontinuance to his succes-sours &c. & by the same they wil say, ỹ where a Deane & a Chapiter be seised of certein lād to thē & to their succesſors, if the Deane alien the same lāds &c. this shall be a discontinuance to his succesſors. So ỹ his succesſor ne may not enter &c. To this may be aunswered, that ther is a great diuersity betwene the said two cases for whē an Abbot & the couēt be seised &c. yet if they be disseised, the Abbot shall haue assise in his owne name wout the naming of his co-uent &c. And if a man may or will sue a Præcipe quod reddat of the same landes when they be in the handes of the Abbot and his couent, it behoueth that such an action be sued against the Abbot onely without naming of ỹ couent &c. for this, that al they be dead persons in the law, saue onely the Abbot ỹ is soueraigne &c. & this is because of ỹ soueraignty &c. for els he should be as one of ỹ other monkes of the Co-uent &c. But the Deane & the Chapter be no dead persons in the lawe &c. For eche of them may haue an action by himselfe in diuers cases and of such landes or tenementes which the Deane and Chapter haue in common &c. if they be disseised, that the Deane & the Chapi-ter shall haue assise, & not the Deane alone, and if an other wil haue an action real of such lāds or tenemēts against the Deane &c. it behoueth him to sue against the Deane and Chapter, & not against the Deane alone &c. & so appea-reth great diuersity betwene these two cases.

¶ Also

¶ Also if the Master of an Hospitall discontinue certain land of his hospital, his successor may not enter, but he is put vnto his writ De Ingressu sine assensu confratrum & sororum suarum. And all such writs do plainlie appeare in the Register &c.

¶ Remitter.

REmitter is an auncient terme in the law, and it is where a man hath two titles to lands or tenements, that is to say, if one of an elder title, and another of a latter title, and he commeth to the land by the latter title, yet the law adiudged him to be in by force of the elder title, for this, that the elder title is the more sure title, and the more worthy title, and then when a man is iudged in by force of the more elder title, this is vnto him said a Remitter, for this, that the law shall admit him to be in the land by the elder title: As if the tenant in the taile discontinue the taile, & after he disseiseth his discontinuee, and so dyeth seised, whereby the tenements discend to his issue, as to his cosin inheritable by force of the taile: in this case this is to him whom the tenements discende which had right by force of the taile, a Remitter in the taile taken, for that, that the law shal put & adiudge him to be in by force of the taile, which is his elder title, for if he shal bee in by force of discent, then the discontinuee may haue a writ of Entre vpon the disseisin in the Per against him, and recouer the tenements, and

his dammages, but in so much that he is in by force of the taile, the title and the interest of the discontinuee is all vtterly adnulled and defeated &c.

¶ Also if tenant in the taile infeoffe in fee his sonne, or his cosin inheritable by force of the taile, the which sonne or cosin at the time of the feoffement is within age, and after the tenant in the taile dyeth, and he to whom the feoffement was made is his heire by force of the title in the taile, this is a Remitter to the heire in the taile, to whom the feoffement is made: For howbeit that during the life of the tenant in the taile that made the feoffement, such heire shalbe adiudged in by force of the feffement, yet after the death of the tenāt in the taile, the heire shalbe adiudged in by force of the taile &c. and not by force of the feoffement', & though that such an heire was of full age at the time of the death of the tenant in the taile that made the feoffement, this maketh no matter if the heyre were within age at the time of the feoffement made to him. And if such an heire being within age at the time of the feoffement commeth to ful age, lyuing the tenant that made the feoffement, & so being of full age, he chargeth by hys deede the same land with a common of pasture, or with a rent charge, and after the tenant in the taile dyeth: Now it seemeth that the land is discharged of the common, and of the rent, because the heire is in by an other estate in the lande, then he was at the time of the charge made,

made, in ſo much that he is in his remitter by force of the taile, and ſo the eſtate that he had at the time of the charge is vtterly defeated &c.

¶ Alſo a principal cauſe why ſuch an heire in the caſes aforeſaid, and other caſes ſemblable ſhalbe ſaid in his Remitter, is for this, that there is no perſon againſt whom that he may ſue his writ of Formedon, for againſt him ſelfe he may not ſue, & he may not ſue againſt none other, for none other is tenant in the frankte-nement, & for that cauſe the law adiudged him in his Remitter, that is to ſay, in ſuch plight, as hee had lawfully recouered the ſame land againſt another.

¶ Alſo if land be tailed to a man & his wife, and to the heires of their two bodyes ingen-dred, the which haue iſſue a daughter, and the wife dyeth, and the huſband taketh an other, and hath iſſue an other daughter and diſconti-nueth the taile, and after he diſſeiſeth the diſ-continuee, & ſo dyeth ſeiſed, now ỹ land diſcen-deth to the two daughters: In this caſe as to the elder daughter that is inheritable, this is a Remitter but of the halfe, and as to the other halfe, ſhee is put to her action of Formedon a-gainſt her ſiſter, for in this caſe two ſiſters be not tenants in parcenarie, but be tenants in common, for this that they bee in by dyuers titles, for the one ſiſter is in her Remitter by force of the taile, as to that, that vnto her belongeth. And the other ſiſter is in as to that that belongeth to her in fee ſimple by the

diſcent of her father: In the ſame maner it is if the tenant in the taile infeoffe his heire apparant in the taile, the heire being within age, and another iointenant in fee, and the tenant in the taile dyeth: Now the heire in the taile is in his Remitter, as to the halfe, & as to the other halfe he is put to his writ of Formedon &c.

¶ Alſo if tenant in the taile infeoffe his heire apparant, the heire being of full age at the time of the feoffement, & after the tenant in the taile dyeth, this is no Remitter to the heire, for this that it was his owne follie, that he being of ful age would take ſuch feoffement &c. But ſuch follie may not be adiudged in the heire beeing within age at the time of the feoffement &c.

¶ Alſo if tenant in the taile infeoffe a woman in fee and dieth, and his iſſue within age taketh the woman to wife, this is a Remitter to the childe, & the wife then hath nothing, for this, that the husband & the wife bin but one perſon in the law. And in that caſe the husband may not ſue a writ of Formedon, vnleſſe he will ſue againſt himſelfe, the which ſhalbe inconuenient, and for that the law iudgeth the heire in his Remitter, for this, that no follie may be aretted to him being within age at the time of the ſpouſailes &c. And if the heire be in his remitter by force of the taile, it followeth by reaſon that ꝑ wife hath nothing &c. for in ſo much that the husband & the wife be but one perſon, the land may not be ſeuered by halfes, and for ſuch cauſe the husband is in his Remitter of the

the whole. But otherwise it is, if such an heir bee of full age at the time of the spousayles, then the heire hath nothing but in the ryght of his wife.

¶ Also if a woman seysed of certaine lande in fee taketh an husband, the which alieneth the same lande to another in fee, and the alyenee letteth the same lande to the husbande and the wife for terme of their two lyues, sauing the reuersion to the lessour, and to the heir, in this case the wife is in her Remitter, and shee is seysed in deede in her demeane as in fee, as shee was before, for this, that the taking of estate shalbe adiudged in the law the deed of the husband, and not the deede of the wife, so that no folly may be iudged in the wife that is couert in such case. And in this case the lessour hath nothing in the reuersion, for this that the wife is seised in fee. But in this case if ỹ lessour wil sue an action of wast against the husband and his wife, for this that the husbande hath made wast, the husbande may not barre the lessour for to shewe this, that the taking of estate made vnto him and to his wife made a Remitter to his wife, for this that the husbande is stopped to say this against his feoffement and owne repriseli of estate for terme of life to him and his wife, and yet the lessour hath no reuersion, for this that the fee simple is in the wife. So a man may see a matter in this case, that a man shall be estopped by a matter in deede though no writing by deede inden-

ted or otherwise be thereof made. But if in an action of Wast the husbande make default at the graund distresse, and the wyfe prayeth to be receyued, and is receyued, shee shal wel shew all the matter, and how shee is in her Remitter, and shall barre the lessor of his action: For in euery case that the wife is receyued for default of her husband, shee shall plead and haue the same aduantage in pleading, as shee were a woman sole. And howbeit that the alyenee made no lease to the husband and his wife by deede indented, yet this is a Remitter to the wife, and though the alienee yelded the same lande to the husband and his wife by fine for terme of their lyues, yet this is a Remitter to the wife, for this that the wife couert that taketh estate by fine shall not be examined by the Justices. And here note well, that when any thing shall passe from the wife that is couert of husband by force of a fine, as the husband & wife make conusance of right to another &c. or make a graunt to yeld to another, or release by a fine to another, Et sic de similibus, where the right of the wife passeth from the wife by force of the same, the wife in all such cases shalbe examined before that the fine bee accepted. And such fines conclude such wiues couert for euer. But where nothing is moued in the fine, but all onely that the husband and the wife take estate by force of the same fine, this shal not conclude the wife, for this that in such case she shalbe neuer be examined.

¶ Also

¶ Also if tenant in the taile discontinue the taile, & hath a daughter & dyeth, & the daughter beeing of ful age taketh an husbande, & the discontinuee maketh a lease of this to the husband & his wife for terme of their liues, this is a remitter in deede to the wife, and the wife is in by force of the taile, Causa qua supra.

¶ Also if land be giuen to the husband & his wife, to haue and to holde to them and to the heires of their two bodies begotten, and after the husband alyeneth the land in fee, & taketh againe an estate to him & to his wife for terme of their two liues. In this case this is a Remitter in deede to the husbande and the wife mauger the husband, for it may not be a remitter to ꝑ wife, except it be a remitter to the husband, for this that the husband & his wife bee but one person in the lawe, though ꝑ the husband is stopped to claime this to be a remitter in him against his alyenation, and his owne repriseil, as is aforesaid.

¶ Also if lande be giuen to a woman in the taile, the remainder to an other in the tail, the remainder to the third in the taile, the remainder to the fowerth in fee, & the wife taketh an husband, & the husband discontinueth the land of his wife, by this discontinuãce al ꝑ remainders be discontinued, for if the wife die wout issu, they in ꝑ remainder shal haue no remedie, but to sue their writs of Formedon in the remander when they come to their time &c. But if after such discontinuance, estate be made to

the husbande and his wife for terme of their two liues, or for terme of an other life, or an other estate &c. for this, that this is a Remitter to the wife, this is a Remitter to all those in the remainder &c. For after this that the wife, that is in her Remitter, dyeth without issue, they in the remainder may enter &c. without any action or suit &c. In the same manner it is of them which haue the reuersion after such taile &c.

¶ Also, if a man let a house to a woman for terme of her life, sauing the reuersion to the lessour, and after one sueth a faynt and false action against the woman, and recouereth the house against her by default, so that the woman may hane against him a writte of Quod ei deforceat, after the Statute of Westm the second cap. 4. nowe is the reuersion of the lessour discontinued, so that he may haue no action of wast. But in this case if the woman take an husbande, and he that recouereth letteth the house to the husbande and his wife for terme of their two liues, the wife is in her Remitter by force of the first lease. And if the husbande and the wife make wast, the first lessour shall haue against him a writt of wast for this, that in so much that the wife is in her Remitter, he is remitted to his reuersion. But it seemeth in this case, if he that here cõmeth by the false action, will bring an other writte of wast against the husbande and his wife, the husbande hath no remedye against him,

him, but to make default at the great distresse &c. And to cause the wife to bee receyued and to plede the matter against the second lessour, and to shew that the action by which he recouered was false and fayned in the law, & so the wife may barre &c.

¶ Also if the husbande discontinue the lande of his wife, and after taketh estate to him & to his wife, & to the thirde man for terme of their liues, or in fee, this is a Remitter to the woman but as to the moitie. And as for the other moitie it behoueth her after the death of her husband to sue a Cui in vita.

¶ Also if the husband discontinue the land of his wife, and go ouer the sea, and the discontynuee let the same land to the woman for terme of lyfe, and deliuer to her seisin, and after the husbande commeth and agreeth to that liuerie of seisin, this is a remitter to the woman, and yet if the woman had beene sole at that time of her lease made to her, this should bee to her a Remitter, but in so much as he was couert baron at the time of the lease, and the liuerie of seisin made to her, though that she only take the liuery of seisin, this was a Remitter to her, because a woman couert shalbe adiudged as an infant within age in such case &c. Enquire in this case if the husband when he commeth againe wil disagree to the lease & liuerie of seisin made to his wife in his absence, if this shal put the woman from her remitter.

¶ Also if the husbande discontinue the tene-

ments

mentes of his wife, and the discontinuee is disseised, and after the disseisor letteth the said tenements to the husband & his wife for terme of life, this is a remitter to the wife, but if the husband & the wife were of couin or consent þ the disseisin should be made, then it is no remitter to the wife. because she is a disseisouresse. But if the husband were of couin & consent to the disseisin & not þ wife, then such lease made to the wife is a Remitter, because that no default was in the wife.

¶ Also, if such a discontinuee had made estate of freehold to the husband and the wife, made by indenture vpon condition. s. reseruing to the discontinuee a certein rent, and for default of payment a reentre, and because that the rent is behind the discontinuee entreth, of this rent the woman shal haue assise of Nouel disseisin, after the death of her husband against the discōtinuee, because that the condition was wholly adnulled, in so much as þ woman was in her remitter, yet the husband with his wife could not haue assise because the husband is stopped.

¶ Also, if the husband discontinue the tenements of his wife, and taketh estate againe for terme of his life, the remaynder after his decease to his wife for terme of her life, in this case this no Remitter to the wife during the life of her husband, because that during the life of the husband, the wife hath nothing in the freehold, but if in this case the wife ouerliue the husband, this is a Remitter

to

to the wife, because that a freeholde in lawe is fallen vpon her mauger her will, & in so much that shee can haue no action against none other person, and against her selfe shee can haue no action, therefore she is in her Remitter, for in this case though that the woman enter not the tenementes, yet a stranger that hath cause to haue action may sue his action against the woman of the same tenements, because she is tenant in lawe, though she bee not tenant in deede, for tenant of franktenement in deede is hee, that if he be disseised of franktenement may haue Assise, but the tenant in the law before his entre shal haue no assise, and if a man seised in fee of certeine land hath issue a sonne which taketh a wife, and the father dyeth seised, and after the sonne dyeth before any entre made by him into ꝑ land, the wife of the sonne shal be endowed in the land, & yet he had no franktenement in deede, but he had a fee & a franktenement in lawe, and so note well that a Præcipe q̄ reddat may aswell be maintained against him that hath the franktenement in lawe, as against him that hath franktenement in deede.

¶ Also if a tenant in the tayle haue issue two sonnes of full age, and he letteth the tayled lande to the elder sonne for terme of his lyfe, the remainder to the yonger sonne for terme of his life, & after the tenant in the tayle dieth, In this case ꝑ elder sonne is not in his remitter, because he toke estate of his father, but if the elder sonne dye wout issue of his body, thē this

this is a remitter to ỹ yonger brother, because he is heire in the taile, and a franktenement in law is fallen vpon him by force of the remainder, & there is none against whom he may sue his action &c. In the same maner it is where a man is disseised, and the disseisor dyeth thereof seised, and the tenements discend to his heire, and the heire of the disseisour maketh a lease to a man of the said tenements for terme of life, the remainder to the disseisour for terme of life or in taile, or in fee, & the tenāt for terme of life dyeth, nowe this is a Remitter to the disseisee &c. Causa qua supra.

¶ Also if a tenant in the tail enfeffe his sonne and an other of the tayled land in fee, and liuerie of seisin is made to the other according to the deede, the sonne not knowing thereof, nor agreeing to the feoffement, and after hee that toke the liuerie of seysin dyeth, and the sonne occupyeth not the lande, nor taketh any profit of the lande during the lyfe of his father, and after the father dyeth, now this is a Remitter to the sonne, because the freeholde is fallen vpon him by the suruyuour, & no default was in him, because he neuer agreed &c. in the life of his father, and there is none against whom he may pursue his writ of Formdone &c. For if a man be disseised of certeine land, and the disseisour maketh a deede of feffement, whereof he enfeoffeth B. C. and D. and the liuerie of seisin is made to B. and C. but D. was not at the liuerie of seisin, nor neuer

agreed

agreed to the feoffement, nor neuer would take the profits &c. And after B. and C. die, and D. ouerlyueth them, and the disseisee bringeth his writ sur disseisin in the Per, against the same D. he shall shew all the matter, and how that hee neuer agreed to the feoffement, and so he shall discharge him selfe of damages, so that the demaundant shal recouer no damage against him, though that he be tenant of franktenement of the land. And yet the statute of Glocester wil, that the disseisee shal recouer damages in a writ of Entre, grounded vpon the Nouel disseisin, against him that is found tenant. And this is a proofe in the other case, that in somuch as the issue in the taile commeth to the franktenement not by his deede, nor by his agreement, but after the death of his father, this is a Remitter to him, in so much that hee can sue an action of Formedon against none other person.

¶ Also if an Abbot alien the land of his house to another in fee, and the alienee by his deede chargeth the land with a rent charge in fee, and after the alyenee enfeoffeth the Abbot wyth licence, to haue and to hold to the Abbot and hys successors for euer, and after the Abbot dyeth, and another is chosen and made Abbot: In this case the Abbot that is successor & his Couent be in their Remitter, and shal hold the land discharged, because that the same Abbot cannot haue an action by his writ of Entre sine assensu Capituli, of the same landes against none other person. In the same manner it is where

where a Bishop or Deane, or other such person alien &c. without assent &c. And after the Bishop taketh estate agayne of the said land by licence to him, and to his successors, and after the Bishop dyeth, his successor is in his Remitter as in the right of his Church, and shall defeat the charge &c. Causa qua supra.

¶ Also if a man sue a false action against tenant in the taile, as if a man will sue against him a writ of Entre in the Post, supposing by his writ that the tenant in the taile had not his entrie but by A. of B. that disseised the graund father of the demaundant, and that is false, and he recouereth against the tenant in the taile by default, and sueth execution, and after the tenant in the taile dyeth, his issue may haue a writ of Formedon against him that recouered, and if hee will pleade the recouerie against the tenant in the taile, the issue may say, that the said A. of B. disseysed not the graund father of hym that recouered in such manner as his writ supposeth, and so he shall falsefie his recouery. Also suppose that that was true, that the said A. of B. disseised the graund father of the demaundant that recouered, and that after the disseisin the demaundant or his father, or his graund father by a deede had released to the tenant in the taile, all the right that he had in the land &c. And this notwithstanding hee sueth his writ of Entre in the Post, against the tenant in the taile, in the manner as is aforesaid, and the tenant in the

taile

taile pleadeth to him, that the sayd A. of B. disseiseth not his graund father, as his writ supposeth: And vpon thys they be at issue, and the issue is found for the demaundant, whereby he hath Iudgement to recouer and sueth execution, and after the tenant in the tayle dyeth, his issue may haue a writte of Formedon against him that recouered. And if he will plead the recouerie by action tried against his father tenant in the taile, then hee may shew and plead the release made to hys father, and so the action that was sued was faint in the law &c.

¶ And it seemeth that faint action is as much to say in English, as fayned action, that is to say, such action, that though the wordes of his writ bee true, yet for certaine causes he hath no cause nor title by the law to recouer by the same action. And false action is, where the wordes of the writ be false: And in the two cases beforesaid, if the case were such, that after such a recouerie and execution thereof made, the tenant in the taile had disseised him that recouered, and thereof dyed seised, whereby the land also discended vnto his issue, this is a Remitter to the issue, and the issue is in by force of the tayle. And for that cause I haue put these two cases beforesayd, to informe thee (my Sonne) that the issue in the taile by force of a discent made to him after a recouerie and execution thereof made against his auncester, may bee aswel in hys Remitter,

as

as he ſhould be by diſcent made to him after a diſcontinuance made by hys auncеſter of the tayled land by feoffement in the countrey, or otherwiſe.

¶ Alſo in the ſame caſe aforeſayd, if the caſe were ſuch, that after the demaũdant had iudgment to recouer againſt the tenant in taile, and the ſame tenant in the taile dyed before any execution had againſt him, whereby the tenements diſcend to his iſſue, and he that recouered ſued a Scire facias to haue execution of the iudgment againſt the iſſue in the taile, the iſſue ſhall plead the matter, as before is ſaid, and ſo ſhal proue that the recouerie was falſe or faint in the law, and ſo ſhall barre him to haue execution of the iudgement &c.

¶ Alſo if tenant in the taile diſcontinue the taile and die, and his iſſue bringeth a writ of Formedon againſt the diſcontinuee being tenant of the freehold of the land, and the diſcontinuee pleadeth that he is not tenant, but otherwiſe diſclaimeth from the tenancy in the land: In this caſe the iudgement ſhal be, that the tenant go without day, and after ſuch iudgement the iſſue in the taile that is demaundant may well enter in the land, notwithſtanding the diſcontinuance. And by ſuch entre he ſhalbe adiudged in his Remitter, & the cauſe is, becauſe that if any man ſue a Præcipe quod reddat againſt any tenant of freehold, in which action the demaundant ſhal not recouer damages, and the tenant pleadeth not Nontenure, but otherwiſe diſclaymeth

meth in the tenancy, the demaundant may not auerre in the writ that he is tenant as ꝑ writ ſuppoſeth. And for that cauſe the demandant after that ꝑ iudgement is giuen, that the tenaunt ſhall goe without day, may enter into the tenements demaunded, the which ſhall be as great aduauntage to him in the lawe, as if he had iudgement to recouer againſt the tenaunt. And by ſuch entre he is in the remitter by force of the taile: but where the demaũdant recouereth damages againſt the tenaunt, there the demaundant may auerre that he is tenant as the writ ſuppoſeth, & that for the aduauntage of the demaundant for to recouer his dãmages, or elſe he ſhal not receiue his dãmages, the which damages be or were giuen him by the lawe.

¶ Alſo if a man be diſſeiſed, and the diſſeyſour die his heire being in by diſcent, now the entre of the diſſeiſee is taken away. And if the diſſeiſy bring his writ of entre vppon the diſſeiſin in the Per againſt the heire, and the heire diſclaimeth in the tenancy &c. the demaundant may auerre his writ that he is tenaunt as the writ ſuppoſeth if he wil, for to recouer his dãmages. But yet if he will leaue the auerrem̃t &c. he may lawfully enter into the lãd, becauſe of the diſclaimer notwithſtãding that his entre before was taken away. And that was adiudged before my maſter ſir Robere Danby late chiefe Juſtice of the common place, and his Companions.

¶ Also, where the entre of a man is lawful, though that he take estate to him when hee is of full age for terme of life, or in taile, or in fee, this is a Remitter to him, if such taking of estate bee not by deede indented, or by matter of record that shall conclude or stop him: For if a man be disseised, and therof taketh estate of the disseisor without deede, or by deede Poll, that is a good Remitter to the disseisee.

¶ Also, if a man let land for terme of life to an other which alieneth to another in fee, & the alienor maketh estate to ỹ lessor, this is a remitter to the lessor, because his entre was lawful.

¶ Also, if a man be disseised, and the disseisor letteth the land to the disseisee by deede Poll, or without deede for terme of yeres, whereby the disseisee entreth, this entre is a Remitter to the disseisee: For in such case where the entre of a man is lawful, and a lease is made to him, though that he claime by wordes in the countrey, that he hath estate by force of such lease, or saieth openly that he claimeth nothing in the lande, but by force of such lease, yet this is a remitter to him, for such claime in the countrey is nothing to purpose: but if he claime in a court of Record that hee hath estate but by force of such lease & not otherwise, then hee is concluded &c.

¶ Also if two iointenauntes seised of certaine lande in fee, the one being of full age, the other within age be disseised, & the disseisour dieth seised and his issue entreth, the one of the iointe-

iointenants being thē within age, & after that he commeth to ful age, the heire of the disseisor letteth the land to ꝑ same iointenāts for terme of their liues, this is a remitter as to the halfe to him that was within age, because that he is seised of ꝑ moitie that belongeth to him in fee, because his entre was lawfull. But the other iointenāt hath in the other halfe but estate for terme of life by force of the lease, because his entre was taken away &c.

¶ VVarrantie.

IT is commonly saide that there be three maner of warranties, that is to say, warrantie lineall, warrantie collaterall, and warrantie that beginneth by disseisin. And it is to weete that before the statute of Glouceſter al warrāties which descended to thē which were heires to them that made the warranty, were barres to the same heires to demand any lands or tenementes against those warranties, except the warranties that began by disseysin, for such warrantie was neuer barre to ꝑ heire, because the warrantie began by wrong, that is to say, by disseisin.

¶ Warrantie that beginneth by disseisin is in such forme. As where there is father & sonne, & the sonne doth purchase land &c. and letteth the same land to his father for terme of yeres, & the father by his deede therof enfeoffeth another in fee, and bindeth him and his heires to

warranty, & if the father die whereby ỹ warrantie discendeth to his sonne this warrantie shall not barre the sonne, for notwithstãding this warrantie, the sonne may well enter in ỹ lande or haue an assise against ỹ alienee if he will, because ỹ warranty began by disseisin. For whẽ ỹ father ỹ had no estate but for terme of yeres made a feoffement in fee, this was a disseisin to ỹ sonne of ỹ franktemẽt that then was in the sonne. In the same maner it is if the sonne let vnto the father ỹ land to holde at will, & after the father maketh a feoffemẽt with warrãty &c. And as it is said of the father so may it be said of euery other auncester &c.

¶ In the same maner it is if tenant by Elegit, tenãt by statute marchant, or tenãt by statute staple, maketh a feffemẽt in fee with warrãty &c. this shall not barre the heire ỹ ought to haue the land because that such warranties beginn by disseisin.

¶ Also if a warden in chiualry or warden in socage make a feffemẽt in fee, in fee taile, or for terme of life w warranty &c. Such warranties be no barres to ỹ heires to whõ the lande shall discend, because that they begin by disseisin.

¶ Also if the father and the sonne purchase certeine landes or tenementes, to haue and to holde to them iointly &c. & after the father alieneth the whole to another and bindeth him & his heires to warranty &c. and after the father dieth, this warranty shall not barre the son of the moity that belõgeth to him of the same te-

nements

nements, because ẏ as to the moitie that belō-ged to the sonne, the warranty began by dis-seisin.

¶ Also, if A. of B. be seised of a mease, & F. of G. ẏ hath no right to enter in ẏ sāe mese clai-ming to hold ẏ sāe mese to him & to his heires, enter into ẏ same mese, but A. of B. thē is con-tinually dwelling in ẏ sāe mease, in this case the possession of ẏ frankteneмēt shalbe alway adiudged in A. of B. & not in F. of G. because ẏ in such case where two be in one mese, or in other tenemēts, & ẏ one claimeth by one title, & the other by an other title, the law shall ad-iudge him in possessiō that hath right to haue the possession of ẏ same tenement. But in the case aforesaid if F. of G. make a feoffement to certein barretours & extorcioners in the coun-trey for to haue maintenaunce of them of the same mese by a deed of feoffement ẅ warrant, by force of which ẏ said A. of B. dare not dwel in the same mese, but goeth out of ẏ same mese, this warrantie beginneth by disseisin, because that such a feoffement was cause that the sayd A. of B. left the possession of the same mese.

¶ Also, if a man that hath no right to enter in anothers tenements, enter into the said te-nements, and incontinently maketh a feoffe-ment to other persons by his deed with war-rantie, & deliuereth to them seisin, this war-rantie beginneth by disseysin, because that the disseisin and the feoffement were made as it were at one tyme. And that this is lawe, ye

may ſee it in a plee. An 38. Ed. 3. in a writt of Formedon in the reuerſion.

¶ Warrantie lyneal is where a man ſeyſed of certeine landes in fee maketh a feoffement by his deede to another, and bindeth him and his heires to warranty, & hath iſſue & dieth, & the warranty diſcendeth to his iſſue, this is a lineal warrãty. And the cauſe why this is a lyneal warranty, is not becauſe ẏ the warrantie diſcendeth from the father to his heire, but the cauſe is, becauſe ẏ if no ſuch deede with warrantie had beene made by the father, then the right of the tenements ſhoulde diſcend to the heire, and the heire ſhould conuey the diſcent from the father &c. For if there be father and ſonne, and the ſonne purchaſe tenementes in fee, and the father diſſeiſeth the ſonne thereof and alyeneth it to another in fee by his deede, and by the ſame deede byndeth him and his heires to warrant the ſame tenementes and ſo forthe, and the father dyeth, now is the ſonne barred to haue the ſayd tenementes, for hee may by no ſuit nor by any other meanes haue the ſayd tenementes, becauſe of the ſaid warrantie. And that is a collaterall warrantie, and yet the warrantie dyſcendeth lyneally from the father to the ſonne. But becauſe that if no ſuch deede with warrantye had beene made, the ſonne in no manner myght conuey the tytle that hee hath of the tenementes from his father to him, in ſo much that his father had no eſtate nor ryght in the tenements

ments, therfore such warrantie is called collateral warrantie: In somuch that he that made the warrantie is collaterall to the title of the tenements, and that is as much to say, that hee to whom warrantie discended, could not conuey the title that he had in the tenements by him that made the warrantie in this case, if no such warrantie had bin made.

Also, if there be graundfather, father, and sonne, & the graundfather is disseised, in whose possession the father releaseth by his deede with warrantie &c. and dieth, and after the graundfather dieth, now is the sonne barred of the tenements by the warrantie of his father, & this is called lineall warrantie, because that if no such warrantie had bin made, the sonne might not haue conueyed the right of the tenements to him, nor shew how he is heire to the graūd father, but by meanes of the father &c.

Also, if a man haue issue three sonnes and is disseised, and the elder sonne releaseth to the disseisor by his deede with warrantie &c. and dyeth without issue, and after this the father dyeth, this is a lineal warrantie to the yonger sonne, because that though the elder sonne died in the lyfe of the father, yet by possibilitie it might bee that he might conuey to hym the tytle of the land by his elder brother, if no such warrantie had bin made: For it might be that after the death of the father, the elder brother entred into the tenements and dyed wythout issue, and then the yonger sonne shall conuey

to him the title by hys elder brother. But in this case, if the yonger sonn release with warrantie to ỹ disseisor, & dyeth without issue, this is a collateral warrãtie to the eldest sonne, because that of such land as was to the other, the elder brother by no possibilicy might conuey to him the title by mean of the yonger brother.

¶ Also, if tenant in the taile hath issue three sonnes, and discontinue the taile in fee, and the middle sonne releaseth by his deede to the discontinuee, and bind him and his heires to warrantise &c. and after the tenant in the taile dye, and the middle dyeth without issue, now is the elder sonne barred to haue any recouerie by a writ of Formedon, because that the warrantie of the middle brother is collateral to him, in so much that he may by no manner conuey to him by force of the taile any discent by the middle brother, and therefore it is a collaterall warrantie. But if in this case the elder brother die without issue, now the yonger brother may well haue a Formedon in the discender, and recouer the same land, because that the warrantie of the middle brother is lineall to the yonger brother, because it may be, that by possibilitie the middle brother may bee seised by force of the taile after the death of his elder brother, & then the yongest brother may conuey his title of discent by the middle brother &c.

¶ Also, if tenant in the taile discontinue the taile, & hath issue and die, and the vncle of the issue release to the discontinuee with warranty

and

and die without issue, this is a collateral warrantie to the issue in the taile, because that the warrantie discendeth vpon the issue, which cannot conuey himselfe to the taile, by meane of his vncle.

¶ Also, if tenant in the taile hath issue two daughters and die, and the elder daughter entreth in to the whole, & thereof maketh a feffement in fee with warrantie, and after the elder daughter dieth without issue: In this case the yonger daughter is barred, as to the moitie, & as to the other half shee is not barred, for as to the moitie that belongeth to ỹ yonger daughter, she is barred, because that as to the moitie that belongeth to her, she cannot conuey the discent by the meanes of her elder sister. And therefore as to the moitie, that is a collateral warranty, but as to the other moity which belongeth to her elder sister, by ỹ same elder sister the warrantie is no barre to the yonger sister, because that she may conuey her discent as to that moitie that belongeth to her elder, by the same elder sister: And so as to that moitie that belongeth to the elder sister, the warrantie as to that is lineall to the yonger sister.

¶ And note well, that as to him that demandeth fee simple by any of hys auncesters, hee shalbe barred by lineall warrantie which discendeth vpon him, except it bee restreyned by some statut, but he which demaundeth fee taile by a writ of Formedon in the discender, shall not bee barred by lineall warrantie, except he haue

haue ynough by diſcent in fee ſimple by the ſame aunceſter that made the warrantie, but a collateral warrantie is a barre to him that demaundeth fee, and alſo to him that demaundeth fee taile, without any other diſcent of fee ſimple, except in caſes that bee reſtrayned by the ſtatute, and other caſes for certaine cauſes, as ſhalbe ſaid hereafter.

¶ Alſo, if land be giuen to a man and to hys heires of his bodie begotten, the which taketh a wife, and haue iſſue a ſonne betwene them, and the huſband diſcontinueth the taile in fee, and dyeth, and after the wife releaſeth to the diſcontinuee in fee with warrantie and dyeth, and the warrantie diſcendeth to the ſonne, this is a collateral warrantie. But if tenements be gyuen to the huſband and the wife, and to the heires of their two bodyes begotten, which haue iſſue a ſonne, & the huſband diſcontinueth the taile, & dieth, and after the wife releaſeth with warrantie & dieth, this warrantie is but a lineal warrantie to ỹ ſonne, for the ſonne ſhal not bee barred in this caſe to ſue his writt of Formedon, except he haue ynough by diſcent in fee ſimple by his mother, becauſe that their iſſu in a writ of Formedon ought to conuey to him the right as heire to his father and to his mother of their two bodies begotten, by forme of the gift. And ſo in ſuch caſe the warrantie of the father, and the warrantie of the mother, be but as lineal warranties to the heire &c. And note wel, ỹ in euery caſe where a man demaundeth

deth tenementes in fee taile by a writ of Formdon, if any of the issues in the taile that had possession or that hath possession make a warranty &c. if he that sueth the writt of Formdon might by any possibility by matter that might be in deede conuey to him by him that made the the warranty by the forme of the gift. ¶ This is a lineal warranty, & not collateral.

¶ Also, if a man haue issue three sonnes, and he geueth lande to his eldest sonne, to haue and to hold to him & to the heires of his bodie begotten, and for default of such issue the remainder to the middle sonne, to him, and to the heires of his bodie begotten, and for default of such issue the remainder to the youngest sonne, and to his heires of his bodie begotten, in this case if the eldest sonne discontinue the taile in fee, and bynde him, and his heires to warrantie, and dye without issue, this is a collaterall warranty to the middle sonne, and he shalbe barred to demaunde the same lande by force of the remainder, because that the remainder in his title, and his eldest brother is collaterall to ỹ title which beginneth by force of the remainder.

¶ In the same manner it is if ỹ middle sonne had the same lande by force of the remainder, because that his eldest brother made no discõtinuance, but died without issue of his bodie, and after the middle sonne maketh a discontynuance with warranty &c. and dyeth without

out issue, this is a collaterall warrantie to the yongest sōne, & also in this case if any of ẏ said sonnes be disseised, & the father that made the gift release to the disseysour all his right &c. with warranty, this is a collaateral warranty to the sonne vpon whom the warranty discended, Causa qua supra. And so note well ẏ where a man ẏ is collaterall to the title &c. releaseth with warranty, that is a collateral warranty.

¶ Also, if the father geeue lande to his elder sonne, to haue & to hold to him & to the heires males of his body begotten, the remainder to the seconde sonne &c. if the eldest brother alien in fee with warranty &c. and hath issue female & dieth without issue male, this is not a collateral warrantie to the second sonne, nor shall not hurt him of his action by Formedon in the remainder, because that the warranty discendeth to the daughter of the eldest sonne, & not to the second sonne. For euery warranty that discendeth, discendeth to him that is heire vnto him which made the warranty by the common law &c.

¶ Also, if lande be geuen to a man and to his heires males of his body begotten, and for default of such issue the remainder thereof to his heires females of his body begotten, and after the donee in the tayle maketh a feoffement in fee with warrantie according, and hath issue a sonne & a daughter and dieth, this warrantie is but a lineall warranty to the sonne, to demaunde by writte of Formedon in the discendre

cendze. And it is but lineal to the daughter to demaunde the same lande by writ of Formedon in the remainder, if her brother dye without heire male, because that she claimeth as heire female of the bodie of her father begottē. But in this case if her brother in his life release to the discontinue with warrantie &c. And after die without issue, this is a collateral warrā-tie to the daughter, because that she cannot cō-uey to her the right that she hath by force of ꝑ remainder by any meane of discent by her bro-ther, & therfore the brother is collateral to the title of his sister, & therefore his warranty is collateral &c.

¶ Also I haue heard saye that in the time of king Richard the second, there was a Justice in the common place dwelling in Kent, called Rikhill, that had issue diuers sonnes. And his entent was, that his eldest sonne should haue certaine landes to him and to his heires of his bodie begotten, and for default of issue, the remainder to his seconde sonne and so forth, And so the thirde sonne &c. And because that he would that none of his sonnes should alien or make warranty for to barre or to hurt the other that shoulde bee in the remainder &c. He causeth to be made an indenture to such ef-fect, that is to say, ꝑ the landes and tenements were giuen to his eldest sonne vppon this condition, that if the eldest sonne aliened in fee or in fee tatle &c. or any of his sonnes alyened &c. ꝑ then their estate should cease & should be

voide

voyde, and that then the saide landes or tenementes immediatly should remaine to the seconde sonne, & to the heires of his body begotten, and that vppon the same condition .s. that if the second sonne alien &c. that thē his estate should cease, & that then the same landes & tenemēts should remaine to the third sonne, & to the heires of his bodie begotten, and so forth, the remainder to other of his sonnes, & liuery of seisin was made according. But it seemeth by reason ỹ all such remainders in ỹ forme beforesaid be voide, and of no value, and that for three causes. One cause is because euerie remainder that beginneth by a deede, it behoueth that the remainder bee in him to whom the remainder is tayled by force of the same deede when the liuerie of seisin is made to him that hath the franktenement.

And such remainder was not to the seconde sonne at the time of liuerie of seisin in the case beforesaid &c.

¶ The second cause is if the first sonne alien the tenements in fee, then is the franktenement and the fee simple in the alienee and in none other, and if the donour had any reuersion by such alienatiō, the reuersion is discontinued, then though that by some reason it may bee that such remainder shall beginne his being and his growing immediatly after such alienation made to a straunger that hath by the same alienation franketenement and fee simple, and also if such remainder shoulde

be

be good, then might he enter vpon the alyenee where he had no maner of right before the alienatiō: which should be inconueniēt. The third cause is when ỹ condition is such ỹ if ỹ eldest sōne alien &c. ỹ his estate shal cease, or shall bee void &c. then after such alienation &c. may the donour enter by force of such cōdition &c. as it seemeth, & so ỹ donor or his heires in such case ought more soner to haue ỹ land, thē ỹ seconde sonne ỹ had no right before such alienation &c. & so it semeth ỹ such remainders in the case beforesaid be void.

¶ Also, at the common law before the statute of Glouceſter, if tenant by the curteſie had aliened in fee with warrantie accordaunt, after his decease this was a barre to ỹ heire &c. as it appeareth by the wordes of the same statute. But it is remedied by the same statute that the warrantie of the tenant by the curteſie shalbe no barre to the heire, except he haue ynough by diſcent by the tenant by the curteſie, for before the saide estatute that was a collaterall warraunty to the heire, because hee coulde not conuey any title of diſcent to the tenementes by the tenant by the curteſie, but onely by his mother or other of his auncesters &c. & that is the cause why it was collaterall warrantie. But if a man enheriter, take a wife, which haue issue a sonne betweene them and the father dyeth, & the sonne entreth into the lande, and endoweth his mother, and after his mother alieneth that that shee hath in her

dower

dower to another in fee, with warrãtie accor-ding, and after dyeth, and the warrantie dis-cendeth to the sonne, nowe the sonne shall bee barred to demaunde the same land because of the said warrantie, because that such collate-rall warrantie of tenaunt in dower is not re-medied by any statute. The same law is where tenant for terme of life maketh an alienation with warrantie &c. and dyeth, and the warrã-tie discendeth to him that had the reuersion or the remainder &c. they shall be barred by such warrantie &c.

Also, in the saide case if it so were ẏ when the tenaunt in dower alyeneth &c. the heire was within age, and also at that time that the warrantie discendeth vpon him, he was with in age, in this case the heire may after enter vppon the alienee notwithstanding the war-rantie discended &c. because that no laches shal be adiudged in the heire within age, that hee entred not vpon the alienee in the life of the tenaunt in dower, but if the heire was with-in age at the time of the alienation, and after he came to full age in the life of the tenaunt in dower, and so being of full age, he entred not in the life of the tenaunt in dower, and after the tenant in dower dyeth there paraduenture the heire shalbe barred by such warranty bee-cause it shalbe accompted his folly ẏ he being of full age, entred not in the life of the tenant in dower &c.

Also it is spoken in the ende of the sayde estatute

eſtatute of Glouceſter, that ſpeaketh of the alienation with warrantie made by the tenant by the curteſie, in ſuch forme.

¶ Alſo in the ſame maner the heire of the woman after the death of his father & mother ſhal not be barred of action, if he demaund the heritage or the marriage of his mother by a writ of Entre that his father aliened in the time of his mother, whereof no fine is leuied in the kings court &c. And ſo by force of the ſame ſtatute if the huſband of the wife alyen the heritage or mariage of his wife in fee with warrantie &c. by his deede in the countrey, this is cleere law that this warrantie ſhall not barre the heire, except he haue ynough by diſcent &c. But the doubt is, if that the huſband alien the heritage of his wife by fine leuied in the kings Courts with warrantie &c. if this ſhal barre the heire without any diſcent in value &c. And as to that I will ſay here certaine reaſons that I haue heard ſay in this matter. I heard my Maſter Sir Richard Newton late chief Juſtice of the common place ſay once in the ſame place, that ſuch warrantie that the baron maketh by fine leuied in the kinges Court, ſhall barre the heire, though that he haue nothing by diſcent, becauſe the Statute ſayeth, whereof no fine is leuyed in the kinges Court &c. And ſo by his opinion, this warrantie by fine &c. abideth yet a collaterall warrantie, as it was at the common law not remedied by the ſayd eſtatute, becauſe that the ſaide eſtatute accepteth the

alienation by fine with warrantie. And some other haue said and yet say the contrary, & this is their proof, that as by the same chapiter of ỹ said estatute it is ordeined, that the warrantie of the tenant by the Curteſie shall not barre the heire, except he haue ynough by discent &c. though that the tenant by the curteſie leuie a fine of the same landes with warrantie &c. as strongly as he can, yet this warrantie shal not barre the heire, except he haue assets or ynough by discent &c. And I beleeue that this is law, and therefore they say, that it should be inconuenient to vnderstand the statute in such forme that a man that hath not but in the ryght of his wife, may by fine leuied by himselfe of the tenements that he hath but in the right of his wife with warrantie &c. barre the heire of the said tenements without discent of the fee simple &c. where the tenant by the Curteſie cannot do it. But they haue said, that the statute shalbe vnderstood after this forme, that is to say, where the Statute speaketh, whereof no fine is leuyed in the kinges Court, that is to say, whereof no lawful fine is rightfully leuied in the same kinges Court, and that is, whereof no fine of the husband and his wife is leuied in the kinges Court, for at the time of the making of the said Statute, euery estate of lands or tenements that any man or woman had that should discende to his heire, was fee simple without condition or vpon condition in deede or in law. And because that such fine then might

might lawfully haue bin leuied by the husband and his wife, and that if the heires of the husband warrant &c. such warrantie shall barre the heire &c.

¶ And so they say that this is the vnderstanding of the said statute, for if the husband and the wyfe made a feoffement in fee by deede in the countrey, the heire after the decease of the husband & the wife shall haue a writ of Entre sur Cui in vita &c. notwithstanding the warrantie of the husband: Then if no such exception was made in the statute of the fine leuied &c. then the heire should haue the writ of Entre &c. notwithstanding the fine leuied by the husband and the wife, because that the wordes of the Statute before the exception of the fine leuied &c. be generally &c. that is to say, that the heire of the woman after the death of her husband and the wife, shal not be barred of action, if he demaund the heritage or the mariage of his mother by a writ of Entre, that his father alened in the time of his mother, and so it should be in the case of the statute, except such wordes were, that is to say, whereof no fine is leuied in the kinges Court: And so they say that this is to be vnderstand, whereof no fine by the husbād & the wife is leuied in the kings Court, the whych is lawfully leuied in such case: for if the Justices haue knowledg ꝑ a man ꝑ hath nothing but in ꝑ right of his wife, will leuie a fine in his name onely, they wil not, nor ought not to take such fine to be leuied by the

husband only without naming the wife, therfore inquire of this matter.

¶ Also it is to wit, that in such wordes where the heire demaundeth the herytage or mariage of his mother, this word (where) is a disiunctiue, and is as much to say, if the heire demaunde the hertitage of his mother, that is to be vndestood the tenements that his mother had in fee simple by discent, or by purchase, or if the heire demaunde the mariage of his mother, that is to say, the tenements that were gyuen vnto his mother in frankmariage.

¶ Also, where it is moued in dyuers deedes these wordes in Latine, Ego & hered̄es mei &c. warrantizabimus, & imperpetuum defendemus, it is to see what effect hath that word defendemus in such deedes: And it seemeth that it hath not the effect of warrantise, nor comprehendeth any clause of warrantise, for if it should be so that it taketh effect or cause of warrantise, then it should be put in some fines leuied in the kings Court. And a man neuer saw that this word defendemus was in fine, but onely thys word warrantizabimus, by which it seemeth that this verbe warrantizo maketh warrantie, and is the cause of warrantise, and none other word in our law.

¶ Also if tenant in the taile bee seysed of tenements deuisable by testament after the custome &c. and the tenant in the taile alieneth the tenements to his brother in fee, and hath issue and dyeth, and after his brother deuiseth by

by his testament ꝑ same tenements to another in fee, & bindeth him and his heires to warrãtise &c. and dieth without issue, it seemeth that this warrantie shall not barre the issue in the taile, if he will sue his writ of Formedon, because that his warrantie discended not to the issue in the taile, in so much as the vncle of the issue was not bound by force of the same warrantie in his life. And the cause ꝑ he could not warrant the land in his life, is in so much that the deuisee could not take any execution or effect but after his decease, & in so much that the vncle in his life was not holde to warrantie, such warrantise may not discend from him to the issue in the taile &c. for nothing may discend from the ancestor to his heire, but ꝑ same that was in the auncester. Also a warrantie may not go after the nature of tenementes by custome, but onely after the forme of ꝑ cõmon law. For if tenant in tail be seised of tenemẽts in borough english, where the custome is, that al tenementes of the same borough, ought to discend to ꝑ yongest sonne, & he discontinueth the taile with warrantie &c. & hath issue two sonnes & dieth seised of other lãds & tenemẽts in the same borough in fee simple to the value and more of the tenementes tayled, & so forth, yet the yongest sonne shall haue a Formedone of the tenemẽts tailed, & shal not be barred by ꝑ warrantise of his father, though ynough to him discended in fee simple from the same father after the custome, for this that the war-

rantie discendeth vpon the elder brother that is in full life &c. & not vpon the yongest sonne. In the same maner it is of collaterall warrantise made of such tenemēts where the warrantise discendeth to the elder sonne &c. this shall not barre the yonger sonne &c. In ỳ same manner it is of tenementes in the Shire of Kent, which is called Gauelkind, ỳ which tenemēts be departable among the brethren &c. after the custome &c. if any such warrantie be made by their auncestors, such warrantie discendeth al onely to the heire that is heire by the cōmon law, & not al to the heires which are heires of such tenements after the custome &c.

¶ Also, if tenant in the taile haue issue two daughters by diuers venters and dyeth, and the daughters enter, and a straunger disseiseth them of the same tenementes, and one of the daughters releaseth by her deede to the disseysour al her right, and byndeth her & her heires to warrantise and dyeth without issue, in this case the sister that suruiueth may wel enter & put out the disseisour of al the tenemēts, for this that such warrantise is no discontynuance, nor collateral warrantise to the sister that suruiueth, for this that they be of halfe bloud, and the one may not be heire to the other after the common law. But otherwise it where there be daughters of tenantes in the taile by one venter.

¶ Also, if tenant in the tayle let tenementes to another for terme of life, the remainder to an other

other in fee, and the collaterall auncester confirmeth the estate of ỹ tenant for terme of lyfe, & bindeth him and his heirs to warrantise for terme of life of ỹ tenāt for terme of life & dyeth and the tenant in the tail hath issue and dieth, now this issue is barred to aske ỹ tenemēts by writ of Formedon during the life of the tenant for terme of life, because of the collaterall discent vpon the issue in the taile. But after the decease of the tenant for terme of life, the issue shal haue a Formdon &c. And vpon this I haue heard a reason that this case shall proue by an other case, that is to say, if a man let his lande to another, to haue and to hold vnto him and to his heires for terme of an others life, & the lessour dyeth, lyuing him to whose life &c. And a stranger entreth into the land, that the heire of the lessee may put him out for this ỹ in the case next aforesaid, in so much that a mā may binde him and his heires to warrant to the tenant for terme of life, al onely during the life of the tenaunt for terme of lyfe, and the warrantise discendeth to the heire of him that made the warrantise, the which warrantise is no warrantise of inherytaunce, but al onely for terme of anothers lyfe, by the same reason where tenementes bee lett to a man, to haue and to holde to him and to hys heires for terme of anothers life, if the father dye, lyuing him to whose life &c. his heire shal haue the tenementes lyuing him to whose life &c. For they haue said, that if a man grant

an annuity to another, to haue & to take to him & to his heires for terme of anothers life if the grauntee dye &c. That after his heire shal haue the annuitie during the life of him to whose life &c. Quære de ista materia &c.

¶ But where such a lease or graunt is made to a man & his heires for terme of yeres, in this case the heire of the lessee & the grātee shal neuer haue after the death of the lessee or the grauntee that, that is so letten or granted, for this that it is a chattel real, & al chattels reals by the common law, shal come to the executors of the grauntee or the lessee, and not to the heire &c.

¶ Also in some cases it may be, that howbeit that a collaterall warrantise be made in fee &c. yet such warrantise may be defeated and anyented. As the tenant in the taile discontinueth the taile in fee, & the discontinuee is disseised, & the brother of the tenāt in the taile releaseth by his deede to ỹ disseisor al his right &c. with warrantise in fee, & dyeth without issue, & the tenant in the taile hath issue and dyeth, nowe the issue is barred of his action by force of the collaterall warrantise discending vpon him, but if after this the discontinuee enter vpon ỹ disseisour, then may the heires in the tail haue his action of Formedon &c. for this that the warrant is anienated & defeated. For whē the warrantise is made vnto a man vpon any estate that then he had, if the estate be defeated, the warrantie is defeated.

¶ In

¶ In the same maner it is if the discontinuee make a feoffement in fee reseruing to him certein rent, & for default of payment a rentre &c, & a collateral auncestor releaseth to the feffee ꝑ hath estate vpon condition &c. & dieth without issue, though that the warrãty discended vpon the issue in the taile, yet if after the rent be behind, & the discontinuee entreth into the lande &c. then the issue in the taile shall haue his recouerie by a writ of Formedon, for this ꝑ the warranty collateral is defeated. And so if any such collaterall warrantie be pleaded against ꝑ issue in the taile in his action of Formedon, he may shew the matter as is aforesaid, howe the warrantie is defeated, and so he may well maintaine his action.

¶ Also if a tenãt in the tail make a feffemẽt to his vncle, & after his vncle maketh a feffement in fee ẅ warrantise &c. to another, & after the feffee of the vncle enfeffeth againe the vncle in fee, & after the vncle enfeffeth a straunger in fee wout warrantise & dyeth without issue, & the tenant in ꝑ taile wil bring his writ of Formdon against the stranger that was last feffee, & that by the vncle, in this case the issue shal neuer be barred by the warrãty ꝑ was made by the vncle of the said first feffee of his vncle, for this that the said warrantise was defeated & aniented, for this that the vncle tooke again to him as great estate of his said first feoffee to whom the warrantise was made, as the same feffee had of him. And the cause why the warrantie

rantie is aniented in this case, is this, ꝑ is to say, ꝑ if the warrantise were in his force, then the vncle shall warrant vnto himselfe, ꝑ may not be, but if the feffee made estate to the vncle for terme of life or in fee taile, sauing ꝑ reuersion vnto him &c. Or ꝑ he made a gift in the taile to the vncle, or a lease for terme of life, the remainder ouer &c. In this the warrantise is not al vtterly aniented, but it is put in suspence during the estate that the vncle had, for after this ꝑ the vncle is dead wouṫ issue, then he in the reuersion, or he in the remainder shall barre the issue in the taile of his writt of Formdon by the collaterall warrantise in such case &c. But otherwise it is where the vncle had as great estate in the land by ꝑ feffee to whom the warrantise was made as the feoffee had of him &c.

¶ Also if the vncle after such feffement made with warrantise, or a release made by him ẅ warrātise be attaint of felony, or outlawed of felony, such collateral warrātie shal not barre nor greeue the issue in the taile, for this that by the attainder of felony, the bloude is corrupt betweene them &c.

¶ Also, if tenant in the taile bee disseised, and after maketh a release to the disseisor ẅ warrantise in fee, and after the tenant in the tayle is attaint or outlawed of felony, and hath issue and dieth, in this case the issue in the taile may enter vpon the disseisour.

¶ And the cause is for this, ꝑ nothing maketh dis=

discontinuance in this case but the warrantie, & the warranty may not discend to the issue in the taile, for this that the bloud is corrupt betwæne him that made the warrantise & ỹ issue in the taile, for the warrantise alway abydeth at the cõmon law, & ỹ cõmon law is such, that when a man is outlawed or attaint of felonie, which outlawry is an attainder in the lawe, ỹ the bloud betwæn him & his sonne & all other which should be said his heires is corrupt, so that nothing by discent may discẽd to any that may be his heir by the cõmon law. And ỹ wife of such a man ỹ is so attaint shall neuer be endowed in ỹ tenemẽts of her husband so attaint &c. And the cause is, because men should more eschew to do felonie &c. But the issue in the taile, as to the tenements tailed, is not in such case barred, because he is inheritable by force of the statute, and not by the course of ỹ cõmon law. And therefore such attainder of his father or his auncester in the taile &c. shal not put him out of his right, that he should haue by force of the taile.

¶ Also, if tenaunt in the tayle enfeoffe his vncle which enfeffeth another with warrantie &c. if after the feoffee by his dæde release to the vncle al maner of warrantie, or al manner of couenants reals, or al maner of demaundes, by such release the warrantie is extinct. And if the warrantie in suche case bæ pleaded against the heire in the tayle that bringeth his writte of Formedon to barre the heire of his

his action, if the heire haue and plede the sayde releale &c. he shall defeate the plee in barre &c. And many other causes & matters there bee, where by a man may defeate warranties.

¶ And it is to witte, that in the same manner as collaterall warrantie may bee defeated by matter in deed or in law, in ỹ same maner may lineal warrantie be defeated &c. For if ỹ heire in the taile bring a writ of Formedon, and a lineall warranty of his auncester inheritable by force of the tail be pleaded against him with that the assets to him discended of fee simple by the same auncester that made the warrantie, if the heire that is demaundant may adnull and defeate the warrantie, this suffiseth to him, for the discent of other tenements of fee simple make nothing to barre the heire without the warrantie &c.

FINIS

¶ Here beginneth the Table of this preſent Booke.

NOw haue I made for thee my Sonne three Bookes. The firſt is, of Eſtates that men haue of landes or tenements, that is to ſay.

Of Tenant in Fee ſimple.
Tenant in Fee taile.
Tenant in taile after poſſibilitie of iſſue extinct.
Tenant by the Curteſie of England.
Tenant in Dower.
Tenant for terme of lyfe.
Tenant for terme of yeares.
Tenant at will by the common Law.
Tenant at will by the Cuſtome of the manor.

¶ The ſecond Booke.

¶ The ſecond Booke is of Homage.
Fealtie.
Eſcuage.
Knights ſeruice.
Socage.
Frankalmoigne, or free almes.
Homage aunceſtrell.
Graund Sergeantie.
Petie Sergeantie.
Tenure in Burgage.
Tenure in Villenage.
Of three manner of Rents, that is to ſay,
Rent ſeruice.

Rent

¶ And know thou my Sonne, that I will not that thou beleeue, that al that that I haue said in the said Bookes is law, for that will I not take vpon mee, nor presume. But of those things that be not law, inquire & learne of my wise Masters learned in the law.

Notwithstanding, though that certayne thinges that be noted and specified in the said Bookes

The Table.

Bookes be not Law, yet such thinges shall make thee more apt and able to vnderstand, and learne the Arguments and the reasons of the law: For by the arguments and the reasons in the law, a man may more sooner come to the certaintie, and to the knowledge of the law.

¶ Lex plus laudatur quando ratioue probatur.

¶ Imprinted at London in Fleetestrete within Temple Barre, at the signe of the Hand and Starre by Richard Tottill.

1593.

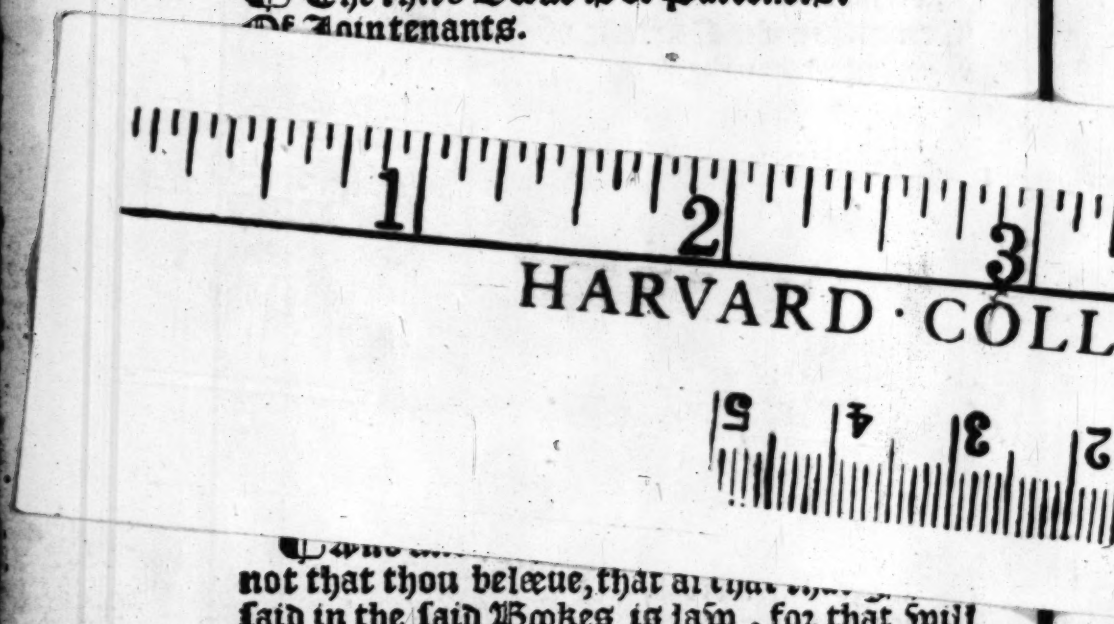
¶ Cum Priuilegio.

Rent charge, and
Rent secke.

¶ And these two small Bookes haue I made for thee, for to vnderstand better certaine Chapiters of the auncient Bookes of Tenures.

¶ The third Booke.

¶ The third Booke is of Parceners.
Of Iointenants.



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